TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1947

No. 44

FRED Y. OYAMA AND KAJIRO OYAMA,
PETITIONERS,

vs.

STATE OF CALIFORNIA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

PETITION FOR CERTIORARI FILED FEBRUARY 25, 1947.

CERTIORARI GRANTED APRIL 7, 1947.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No.

FRED Y. OYAMA, ALSO KNOWN AS FRED YOSHIHIRO OYAMA, MINOR, KAJIRO OYAMA, ALSO KNOWN AS K. OYAMA, INDIVIDUALLY AND AS GUARDIAN OF THE PERSON AND ESTATE OF FRED YOSHIHIRO OYAMA, A MINOR, ET AL., PETITIONERS,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

INDEX

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., DEC. 19, 1946.

—8165

[fol. 1] [File endorsements omitted]

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF SAN DIEGO

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,

vs.

FRED Y. OYAMA, also known as FRED YOSHIHIRO OYAMA, a minor; Kajiro Oyama, also known as K. Oyama, individually and as guardian of the person and estate of Fred Yoshihiro Oyama, a minor; Kohide Oyama, formerly Kohide Kushino; Ririchi Kushino; June Kushino, also known as Junko Kushino; Yonezo Oyama; Lawrence W. Junker, as Administrator of the Estate of John Marcs, deceased; George Schertzer; John Kurfurst; Doe One, Doe Two and Doe Three, Defendants

PETITION TO DECLARE AN ESCHEAT TO THE STATE OF CALIFORNIA—Filed August 28, 1944

Comes now the plaintiff and petitioner and for cause of action against the defendants alleges:

FIRST CAUSE OF ACTION

I

That during all of the times mentioned in this complaint the defendants Kajiro Oyama, also known as K. Oyama, Kohide Oyama, formerly Kohide Kushino and Ririchi Kushino, were and each of them was and now is of the Japanese Race, natives of the Empire of Japan and citizens and subjects of the Empire of Japan and by reason thereof not eligible to citizenship under the laws of the United States.

II

That the defendant Fred Y. Oyama, also known as Fred Yoshihiro Oyama is of the Japanese Race and was born in [fol. 2] San Diego, California, on or about March 23, 1928.

That the defendant June Kushino is of the Japanese Race and was born in San Diego, California, on March 4, 1921.

That on March 22, 1935, the defendant Kajiro Oyama, also known as K. Oyama, was, in the Superior Court of the State of California, in and for the County of San Diego, appointed guardian of the person and estate of Fred Yoshihiro Oyama, a minor, and qualified as such guardian and ever since has been and now is the guardian of the person and estate of said minor.

That the defendant June Kushino, also known as Junko Kushino, attained the age of 21 years on March 4, 1942; that during her minority the defendant Riichi Kushino was the guardian of the person and estate of said June Kushino.

III

That there is no treaty now existing between the Government of the United States of America and the government of the Empire of Japan, by which citizens or subjects of the Empire of Japan, or natives of Japan are permitted to acquire, possess, enjoy, use, cultivate, occupy, transfer, own, or inherit lands for agricultural purposes in the State of California, or to have in whole or in part the beneficial use of agricultural land in the State of California or elsewhere in the United States, nor was there on December 9, 1920, nor has there ever been any such treaty at any of [fol. 3] the times mentioned in this complaint.

IV

That Robert W. Kenny is the duly elected, qualified and acting Attorney General of the State of California, and Thomas Whelan is the duly elected, qualified and acting District Attorney of the County of San Diego, in the State of California; and that each of them has been informed and verily believes that the property hereinafter described has escheated to the State of California through and by reason of the facts in this complaint alleged.

V

That plaintiff is informed and believes and on such information and belief alleges: That on or about the 18th day of August, 1934, defendants Kajiro Oyama, also known as K. Oyama, and Kohide Oyama, formerly Kohide Kushino, purchased that certain parcel of real property described as:

All that portion of the Easterly Half of the Southwesterly Quarter of Quarter Section 164 in the Rancho

de la Nacion, in the City of Chula Vista, County of San Diego, State of California, according to the Map thereof No. 166, made by Morrill on file in the County Recorder's office, lying East of the Westerly 140 feet of even width thereof, and North of the Southerly 670.15 feet of even width thereof, Excepting therefrom the Southerly 2 acres thereof. Also Excepting the [fol. 4] Northerly 40 feet of said property deeded to the City of Chula Vista for street purposes.

That on or about said 18th day of August, 1934, said real property was purported to be conveyed to defendant Fred Y. Oyama by Yonezo Oyama by a purported grant deed wherein the said Yonezo Oyama was named grantor and Fred Y. Oyama was named grantee; that on the 1st day of March, 1935, said purported grant deed was recorded at Book 380, page 275 of Official Records in the office of the County Recorder of San Diego County.

VI

That plaintiff is informed and believes and on such information and belief alleges the fact to be that the purchase price for said purported deed and conveyance was the sum of $4,000, which was paid by said defendants Kajiro Oyama and Kohide Oyama to Yonezo Oyama.

VII

That said real property hereinbefore described is and at all times herein mentioned has been agricultural land, and at all times herein mentioned has been used for agricultural purposes.

VIII

That upon the execution and delivery of the purported deed of said lands as hereinbefore alleged, to wit, on or about August 18, 1934, said defendants Kajiro Oyama and [fol. 5] Kohide Oyama entered into the possession of said real property hereinbefore described and ever since said date have occupied and do now occupy, use, enjoy and cultivate said lands as their own and ever since said date have had in their own right the beneficial use and enjoyment of said lands for agricultural purposes, and the beneficial use of the crops grown thereon.

IX

That said purchase of said property and the purported deed taken in the name of Fred Y. Oyama is a mere subterfuge and cover for the transaction of the said defendants, and is a fraud upon the People of the State of California, and that by reason of the premises the said State of California, the plaintiff herein, is entitled to have said property declared escheated to the said State of California.

X

That the defendant Kajiro Oyama, also known as K. Oyama, at no time accounted to the said Superior Court for his receipts and expenditures as guardian of the person and estate of defendant Fred Y. Oyama, also known as Fred Yoshihiro Oyama, a minor; that said defendant Kajiro Oyama has at no time since said 18th day of August, 1934, filed any annual or other account or report with the Secretary of State of California as required by the provisions of section 5 of the Alien Land Law of California; that said defendant has at no time filed in the office of the County [fol. 6] Clerk of San Diego County any report or account; that said defendant has at no time served a copy of any account or report on the District Attorney of San Diego County.

That the said defendant Kajiro Oyama in conducting the business and handling the affairs of said real property has used the names "Fred Oyama" and "Y. Oyama" and has maintained checking accounts in banks under said names for the purpose of evading and violating the provisions of the Alien Land Law of California.

That all of said acts hereinbefore alleged were done by said defendants Kajiro Oyama and Kohide Oyama wilfully, knowingly and with the intent to violate the Alien Land Law of the State of California, and with the intent to prevent, evade and avoid escheat as provided therein and by means whereof said Kajiro Oyama and Kohide Oyama did unlawfully and in violation of said Alien Land Law of California obtain the possession, use, occupancy, ownership and enjoyment of said agricultural lands hereinbefore described, and ever since said date of August 18, 1934, have had, owned, possessed, used and enjoyed, cultivated and occupied said lands, and do now have, own, possess, use, cultivate, occupy and enjoy said lands for agricultural purposes.

XI

That by reason of the facts hereinbefore alleged the said real property hereinbefore described has been acquired and is now held by said defendants Kajiro Oyama [fol. 7] and Kohide Oyama in violation of that certain Statute of the State of California commonly known as the Alien Land Law, submitted by initiative, proposed to and adopted by the People of the State of California at the general election of November 2d, 1920, entitled "An act relating to the rights, powers and disabilities of aliens and of certain companies, associations and corporations with respect to property in this State, providing for escheats in certain cases, prescribing the procedure therein, requiring reports of certain property holders to facilitate the enforcement of this act, prescribing penalties for violation of the provisions hereof, and repealing all acts or parts of acts inconsistent or in conflict herewith," as amended. That all of said property hereinbefore described has escheated and is escheated to the State of California.

XII

That the defendants Yonezo Oyama, George Schertzer, John Kurfurst, Doe One, Doe Two and Doe Three have or claim to have some right, title, interest and claim in or to said real property adverse to the plaintiff, the nature and amount of which is unknown to the plaintiff, and are necessary parties to the determination of this action.

XIII

That the true names or capacities, whether individual, corporate, associate or otherwise of defendants Doe One, Doe Two and Doe Three, are unknown to plaintiff who there- [fol. 8] fore sues said defendants by such fictitious names and will ask leave to amend this complaint to show their true names and capacities when same have been ascertained.

SECOND CAUSE OF ACTION

For a second cause of action alleges:

I

Plaintiff and petitioner here refers to each and all of the allegations contained in paragraphs I to IV, inc., VII, IX, X, XI and XIII, in the First Cause of Action hereof

and adopts and re-alleges each and all of the allegations contained in said paragraphs as if the same were fully set forth herein.

II

That on December 17, 1937, the Superior Court of the State of California, in and for the County of San Diego, made and entered, in that certain proceeding entitled "In the matter of the Guardianship of the Person and Estate of June Kushino, a minor," being case No. 24654 in said court, its order confirming the sale of certain real property to Fred Y. Oyama, a minor, for the sum of $1,500; that a certified copy of said order was recorded on December 20, 1937, in the office of the County Recorder of San Diego County at Book 725, page 320 of Official Records; that the real property purported to be sold to said defendant Fred Y. Oyama in the transaction confirmed by said order is described as follows:

> [fol. 9] The Southerly 2 acres of that portion of the Easterly Half of the Southwesterly Quarter of Quarter Section 164 in the Rancho de la Nacion, in the City of Chula Vista, County of San Diego, State of California, according to the Map thereof No. 166 made by Morrill, on file in the County Recorder's Office, lying East of the Westerly 140 feet, of even width thereof, and North of the Southerly 670.15 feet, of even width thereof.

That the record title to said property stands in the name of John Marcs; that John Marcs died intestate in the County of San Diego, State of California on or about December 20, 1943; that the defendant Lawrence W. Junker is the duly appointed, qualified and acting administrator of the estate of John Marcs, deceased.

III

That plaintiff is informed and believes that the defendant Ririchi Kushino purchased said real property from said John Marcs in his lifetime and that said John Marcs made, executed and delivered to Ririchi Kushino a deed purporting to convey said property to the defendant June Kushino, also known as Junko Kushino.

IV

That upon the making and recording of said order confirming said purported sale from said June Kushino to said Fred Y. Oyama, said defendants Kajiro Oyama and Kohide [fol. 10] Oyama entered into the possession of said real property hereinbefore described and ever since said date have occupied and do now occupy, use, enjoy and cultivate said lands as their own and ever since said date have had in their own right the beneficial use and enjoyment of said lands for agricultural purposes, and the beneficial use of the crops grown thereon.

V

That all of said acts hereinbefore alleged were done by said defendants Kajiro Oyama and Kohide Oyama wilfully, knowingly and with the intent to violate the Alien Land Law of the State of California, and with the intent to prevent, evade and avoid escheat as provided therein and by means whereof said Kajiro Oyama and Kohide Oyama did unlawfully and in violation of said Alien Land Law of California obtain the possession, use, occupancy, ownership and enjoyment of said agricultural lands hereinbefore described, and ever since said date of December 17, 1937, have had, owned, possessed, used and enjoyed, cultivated and occupied said lands, and do now have, own, possess, use, cultivate, occupy and enjoy said lands for agricultural purposes.

VI

That the defendants Ririchi Kushino, June Kushino, also known as Junko Kushino, Yonezo Oyama, Lawrence W. Junker, as administrator of the Estate of John Mares, deceased, George Schertzer, John Kurfurst, Doe One, Doe [fol. 11] Two and Doe Three have or claim to have some right, title, interest and claim in or to said real property adverse to the plaintiff, the nature and amount of which is unknown to the plaintiff, and are necessary parties to the determination of this action.

Wherefore, plaintiff prays that it be adjudged and decreed that said real property described in plaintiff and petitioner's First Cause of Action has escheated to the State of California as of the date of August 18, 1934, and is now the property of the State of California; and that it be adjudged

and decreed that the said real property described in plaintiff and petitioner's Second Cause of Action has escheated to the State of California as of the date of December 17, 1937, and is now the property of the State of California, and that the defendants Fred Y. Oyama, also known as Fred Yoshihiro Oyama, a minor; Kajiro Oyama, also known as K. Oyama, individually and as guardian of the person and estate of Fred Yoshihiro Oyama, a minor; Kohide Oyama, formerly Kohide Kushino; Ririchi Kushino; June Kushino, also known as Junko Kushino; Lawrence W. Junker, as Administrator of the Estate of John Mares, deceased, George Schertzer; John Kurfurst; Doe One, Doe Two and Doe Three, be forever barred from asserting any claim, right, or title in or to said premises or any part thereof as against the State of California, and for such other and further relief as to the Court may seem meet and just in the premises.

[fol. 12] Robert W. Kenny, Attorney General of the State of California; Thomas Whelan, District Attorney of the County of San Diego, State of California. By Duane J. Carnes, Deputy District Attorney. Attorneys for Plaintiff.

[fol. 13] In Superior Court of San Diego County

No. 121200

Default—August 23, 1945

In this Action, the Defendant George Schertzer, John Kurfurst and Lawrence W. Junker as Administrator of the Estate of John Mares, deceased, having been regularly served with process, and having failed to appear and answer to Plaintiff's complaint on file herein, and the time allowed by law for answering having expired, the default of said defendant in the premises is hereby duly entered according to law.

Attest my hand and the seal of the Superior Court, this 23rd day of August, 1945. J. B. McLees, Clerk. By R. B. Seifert, Deputy. (Seal.)

[fol. 14] [File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF SAN DIEGO

[Title omitted]

AFFIDAVIT OF ROBERT W. KENNY—Filed August 28, 1944

STATE OF CALIFORNIA,
County of Los Angeles, ss:

Robert W. Kenny, being first duly sworn deposes and says:

That he is the duly elected, qualified and acting Attorney General of the State of California;

That defendants herein Fred Y. Oyama, also known as Fred Yoshihiro Oyama, a Minor; Kajiro Oyama, also known as K. Oyama, individually and as guardian of the person and estate of Fred Yoshihiro Oyama, a minor; Kohide Oyama, formerly Kohide Kushino; Ririchi Kushino; June Kushino, also known as Junko Kushino and Yonezo Oyama [fol. 15] are not nor is either of said named persons, nor is the address of either of them, known to affiant.

Robert W. Kenny, Affiant.

Subscribed and sworn to before me this 9th day of August, 1944. Kathryn Buckman, Notary Public in and for the County of Los Angeles, State of California. (Seal.)

[fol. 16] [File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF SAN DIEGO

[Title omitted]

AFFIDAVIT OF HARRY B. RILEY—Filed August 28, 1941

STATE OF CALIFORNIA,
County of Sacramento, ss:

Harry B. Riley, being first duly sworn deposes and says:

That he is the duly elected, qualified and acting State Controller of the State of California:

That defendants herein, Fred Y. Oyama, also known as Fred Yoshihiro Oyama, a Minor; Kajiro Oyama, also known as K. Oyama, individually and as guardian of the person and estate of Fred Yoshihiro Oyama, a minor; Kohide Oyama, formerly Kohide Kushino; Ririchi Kushino; June Kushino, also known as Junko Kushino and Yonezo Oyama are not, nor is either of said named persons, nor is [fol. 17] the address of either of said named persons, known to affiant.

That said named persons have not, nor has either of them filed in the Office of the State Controller of the State of California any written request for service of process, nor have said named persons nor has either of them filed in the Office of said State Controller any written statement showing the name and address of such person.

Harry B. Riley, Affiant.

Subscribed and sworn to before me this 22 day of August, 1944. Roy Hann, Notary Public in and for the County of Sacramento, State of California. My Commission Expires March 17, 1947. (Seal.)

[fol. 18] [File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF SAN DIEGO

[Title omitted]

ORDER FOR PUBLICATION—Filed August 28, 1944

It satisfactorily appearing from the petition and complaint filed herein on behalf of plaintiff that said action relates to and the subject of the same is real property within this State, in which the defendants have or claim an interest and in which the relief sought consists in part in excluding said defendants from any interest therein; and

It further appearing from the affidavit of Eugene D. Allen filed herein that:

That defendants Fred Y. Oyama, also known as Fred Yoshihiro Oyama, Kajiro Oyama, also known as K. Oyama, and Kohide Oyama, formerly Kohide Kushino, have de-

parted from and reside out of the State of California, and at 383 North 4 West, Payson, Utah;

[fol. 19] That the defendant June Kushino, also known as Junko Kushino, has departed from and resides out of the State of California, and at 4717 Greenwood Avenue, Chicago, Illinois:

That defendants Rirchi Kushino and Yonezo Oyama have departed from and reside out of the State of California, their places of residence being unknown; and

It further appearing that there has not been filed on behalf of said defendants in said San Diego County, where said action was brought and is pending, the certificate of residence provided for in section 1163 of the Civil Code of the State of California; and

It further appearing that an order, as required by Section 1268 of the Code of Civil Procedure, was duly made requiring all of the defendants and all persons interested in or claiming to have an interest in the real property or estate in said petition and complaint described, to appear and show cause, if any they have, at the time and place designated in said petition and complaint why it should not be adjudged that said real property or estate has escheated and is escheated to and why the title thereto should not vest in the State of California, and that personal service cannot be made within the State of California upon the above named defendants who have departed from, and reside without the State of California; and

It further appearing that The Daily Transcript is a newspaper of general circulation printed and published [fol. 20] daily except Sundays in the City of San Diego, County of San Diego, State of California, and is the newspaper most likely to give notice of this action to said defendants, and to all persons interested in or who claim an interest in said real property or estate;

It Is Hereby Ordered that service of said Order to Show Cause upon said defendants and all persons interested in or who claim an interest in said real property or estate be made by publication of said order to show cause in The Daily Transcript, which said newspaper is hereby designated as most likely to give notice of this action to said defendants and to all persons interested or who claim an interest in or to said real property or estate, said publication to be made once each calendar week successively for

two months, the last publication to be at least ten days prior to the day fixed in said order for showing cause, and

It Is Further Ordered that a copy of said Order to Show Cause together with a copy of the petition and complaint in this action be deposited in the post office, postage prepaid, directed to the persons to be served, as follows:

Fred Y. Oyama, 383 North 4 West, Payson, Utah; [fol. 21] Kajiro Oyama, 383 North 4 West, Payson, Utah; Kohide Oyama, 383 North 4 West, Payson, Utah; June Kushino, 4717 Greenwood Avenue, Chicago, Illinois.

Dated this 28 day of August, 1944.

Jacob Weinberger, Judge of the Superior Court.

[fol. 22] [File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF SAN DIEGO

[Title omitted]

ORDER TO SHOW CAUSE—Filed August 28, 1944

It satisfactorily appearing from the petition and complaint herein, filed by Robert W. Kenny, Attorney General, and Thomas Whelan, District Attorney of the County of San Diego, on behalf of The People of the State of California, as plaintiff, against Fred Y. Oyama, also known as Fred Yoshihiro Oyama, a minor; Kajiro Oyama, also known as K. Oyama, individually and as guardian of the person and estate of Fred Yoshihiro Oyama, a minor; Kohide Oyama, formerly Kohide Kushino; Ririchi Kushino; June Kushino, also known as Junko Kushino; Yonezo Oyama; Lawrence W. Junker, as administrator of the Estate of John Mares, deceased; George Schertzer; John Kurfurst; Doe One, Doe Two and Doe Three, as Defendants;

That this action relates to and that the subject of this [fol. 23] action is that certain real property situate, lying and being in the County of San Diego, State of California, and particularly described as follows, to wit:

Parcel One:

All that portion of the Easterly Half of the Southwesterly Quarter of Quarter Section 164 in the Rancho

de la Nacion, in the City of Chula Vista, County of San Diego, State of California, according to the Map thereof No. 166, made by Morrill, on file in the County Recorder's office, lying East of the Westerly 140 feet of even width thereof, and North of the Southerly 670.15 feet of even width thereof, Excepting therefrom the Southerly 2 acres thereof. Also Excepting the Northerly 40 feet of said property deeded to the City of Chula Vista for street purposes.

Parcel Two:

The Southerly 2 acres of that portion of the Easterly Half of the Southwesterly Quarter of Quarter Section 164 in the Rancho de la Nacion, in the City of Chula Vista, County of San Diego, State of California, according to the Map thereof No. 166 made by Morrill, on file in the County Recorder's office, lying East of the Westerly 140 feet, of even width thereof, and North of [fol. 24] the Southerly 670.15 feet, of even width thereof.

And it further appearing from said petition and complaint that plaintiff claims and alleges that by reason of the facts and circumstances alleged in said petition and complaint that said real property did escheat and has escheated and is escheated to the State of California;

And it further appearing from said petition and complaint that defendants Fred Y. Oyama, also known as Fred Yoshihiro Oyama, a minor; Kajiro Oyama, also known as K. Oyama, individually and as guardian of the person and estate of Fred Yoshihiro Oyama, a minor; Kohide Oyama, formerly Kohide Kushino; Ririchi Kushino; June Kushino, also known as Junko Kushino; Yonezo Oyama; Lawrence W. Junker, as administrator of the Estate of John Mares, deceased; George Schertzer; John Kurfurst; Doe One; Doe Two and Doe Three have or claim to have some right, title, interest and claim in and to said real property adverse to the plaintiff which right, title, interest or claim is alleged by plaintiff to be without right and subject and subordinate to the right and claim of plaintiff herein;

And it further appearing that this action was commenced by filing said petition and complaint under and pursuant to the provisions of Part III, Title VIII of the Code of Civil Procedure, and the "Alien Land Law," as amended;

And good cause appearing,

[fol. 25] It Is Therefore Ordered:

That said above named defendants, Fred Y. Oyama, also known as Fred Yoshihiro Oyama, a minor; Kajiro Oyama, also known as K. Oyama, individually and as guardian of the person and estate of Fred Yoshihiro Oyama, a minor; Kohide Oyama, formerly Kohide Kushino; Ririchi Kushino; June Kushino, also known as Junko Kushino; Yonezo Oyama; Lawrence W. Junker, as administrator of the Estate of John Marcs, deceased; George Schertzer; John Kurfurst; Doe One; Doe Two and Doe Three, and all persons interested in or claiming an interest in said real property or estate appear and show cause, if any they have, on the 6 day of November, 1944, at the hour of 10 o'clock A. M. of said day in Department No. 6 of the Superior Court of the State of California, in and for the County of San Diego, in the court room of said Department No. 6, in the Courthouse, in the City of San Diego, County of San Diego, State of California, why it should not be adjudged that said real property has escheated to and why the title to said real property should not vest in the State of California as prayed for in said petition and complaint.

It is further ordered that this order be published at least once a week for two successive months in The Daily Transcript, a newspaper of general circulation, printed and published in the County of San Diego, State of California, the last of such publications to be at least ten days prior [fol. 26] to the 6 day of November 1944.

Dated: Aug. 28, 1944.

Jacob Weinberger, Judge of the Superior Court.

[fol. 27] [File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF SAN DIEGO

[Title omitted]

AFFIDAVIT OF SERVICE OF ORDER TO SHOW CAUSE—Filed August 29, 1944

1013a, C. C. P.

STATE OF CALIFORNIA,
County of San Diego, ss:

Edna M. Zinn, being first duly sworn deposes and says:

That affiant is a citizen of the United States and a resident of the County of San Diego; that affiant is over the age of eighteen years and is not a party to the within and above entitled action.

That affiant's business address is: Room 302, Civic Center Building, San Diego 1, California;

That on the 28th day of August, 1944, affiant served the Order To Show Cause and Petition To Declare An Escheat To The State Of California on file herein on the Defendant Fred Y. Oyama in said action by placing a true copy thereof in an envelope addressed to said defendant as follows:

[fol. 28]

Fred Y. Oyama,
383 North 4 West,
Payson, Utah;

That on the 28th day of August, 1944, affiant served the Order To Show Cause and Petition To Declare An Escheat To The State Of California on file herein on the defendant Kajiro Oyama in said action by placing a true copy thereof in an envelope addressed to said defendant as follows:

Kajiro Oyama,
383 North 4 West,
Payson, Utah;

That on the 28th day of August, 1944, affiant served the Order To Show Cause and Petition To Declare An Escheat To The State Of California on file herein, on the defendant Kohide Oyama, in said action, by placing a true copy

thereof in an envelope addressed to said defendant as follows:

Kohide Oyama,
383 North 4 West,
Payson, Utah;

That on the 28th day of August, 1944, affiant served the Order To Show Cause and Petition To Declare An Escheat To The State Of California on file herein, on the defendant, June Kushino, in said action by placing a true copy thereof in an envelope addressed to said defendant as follows:

June Kushino,
4717 Greenwood Avenue,
Chicago, Illinois,

[fol. 29] and then sealing said envelopes and depositing the same, with postage thereon fully prepaid, in the United States Post Office at San Diego, California, where is located the office of the attorney for the party by and for whom said service was made.

That there is a regular daily communication of United States mail between the place of mailing and the places so addressed.

Edna M. Zinn.

Subscribed and Sworn to before me this 28th day of August, 1944, Marcia Kerns, Notary Public in and for the County of San Diego, State of California. My commission expires January 16, 1945. (Seal.)

[fol. 30] [File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF SAN DIEGO

[Title omitted]

NOTICE OF APPEARANCE—Filed November 6, 1944

To the Plaintiff Above-Named, and Robert W. Kenny, Thomas Whelan, and Duane J. Carnes, Its Attorneys.

GENTLEMEN:

Please take notice that defendants, Fred Y. Oyama, also known as Fred Yoshihiro Oyama, a minor; Kajiro Oyama, also known as K. Oyama, Individually and as guardian of the person and estate of Fred Yoshihiro Oyama, a minor; Kohide Oyama, formerly Kohide Kushino; Ririchi Kushino, June Kushino, also known as Junko Kushino; Yonezo Oyama; hereby appear in the above-entitled action by the undersigned, their attorneys.

Dated November 3rd, 1944.

A. L. Wirin and J. B. Tietz, by J. B. Tietz, Attorneys for Defendants.

[fol. 31] IN SUPERIOR COURT OF SAN DIEGO COUNTY

AFFIDAVIT OF SERVICE OF NOTICE OF APPEARANCE

(C. C. P. 1013a)

STATE OF CALIFORNIA,
County of Los Angeles, ss:

A. Lloyd, being first duly sworn, says: That affiant is a citizen of the United States and a resident of the County of Los Angeles; that affiant is over the age of eighteen years and is not a party to the within and above entitled cause; that affiant's business address is 257 South Spring Street, Los Angeles 12, California. That on the 2nd day of November, 1944, affiant served the within Notice Of Appearance on the Attorney for Plaintiff in said action by placing a true copy thereof in an envelope addressed to the attorney of record of said Plaintiff, at the business/residence address

of said attorney, as follows: "Duane J. Carnes, Deputy, Office of District Attorney, 302 Civic Center, San Diego, California" and by then sealing said envelope and depositing the same, with postage thereon fully prepaid, in the United States Postoffice at Los Angeles, California, where is located the office of the attorney for the person by and for whom said service was made.

That there is delivery service by United States mail at the place so addressed and/or there is a regular communication by mail between the place of mailing and the place so addressed.

A. Lloyd.

[fol. 32] Subscribed and sworn to before me this 2nd day of November, 1944. J. B. Tietz, Notary Public in and for the County of Los Angeles, State of California. (Seal.)

[fol. 33] [File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF SAN DIEGO

No. 121200

[Title omitted]

DEMURRER—Filed February 17, 1945

The defendants, Fred Y. Oyama, Kajiro Oyama, Kohide Oyama, Ririchi Kushino, June Kushino and Yonezo Oyama, demur to the Complaint and to both causes of action in said Complaint upon the following grounds:

I

Said complaint does not state facts sufficient to constitute a cause of action.

II

The Court has no jurisdiction over the persons of the defendants, or the subject matter of the action.

III

The California Alien Land Law is unconstitutional in that, under the Constitution of the United States, it de-

prives the defendants of liberty and property, and of the equal protection of the laws, under the XIVth Amendment to the Constitution of the United States; and abridges the [fol. 34] rights of the defendants under the Constitution of the State of California to due process of law under Article 1, Section 13 of the Constitution of the State of California, and of privileges guaranteed by Article 1, Section 21 of said Constitution.

IV

The cause of action against the defendants is barred by the Statute of Limitations.

A. L. Wirin and J. B. Tietz, by A. L. Wirin, Attorneys for Defendants.

CERTIFICATION

I hereby certify that the above Demurrer is filed in good faith and without intent to delay and that in my opinion it is well taken.

A. L. Wirin.

[fol. 35] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF SAN DIEGO

No. 121200

[Title omitted]

POINT AND AUTHORITIES IN SUPPORT OF DEMURRER

I

A suit for escheat of property under the California Alien Land Law is one for a forfeiture or penalty and is barred by the One Year Statute of Limitations.

C.C.P. Sec. 340

People v. *Grant*, 52 Cal. App. (2d) 794

(a) A suit, although involving an interest in real property may be governed by the One Year Statute of Limitations.

County of Los Angeles v. *Ballerino*, 99 Cal. 593

(b) Sec. 340, C.C.P. applies only in cases involving adverse possessions.

National Soda Products Co. v. *City of Los Angeles*, 23 Cal. (2d) 204

People v. *Center*, 66 Cal. 551.

Cf. *Hansen* v. *Vallejo Electric Light & Power Co.*, 182 Cal. 492, for definition of "penalty".

[fol. 36] Cf. *People* v. *Broad*, 216 Cal. 1 and *Leman* v. *Los Angeles Terminal R. Co.*, 38 Cal. App. 659, for a definition of "forfeiture".

II

In any event the ten year Statute applies.

Sec. 315 C.C.P.

III

The California Alien Land Law is unconstitutional in that, under the Constitution of the United States, it deprives the defendants of liberty and property, and of the equal protection of the laws, under the XIVth Amendment to the Constitution of the United States; and abridges the rights of the defendants under the Constitution of the State of California to due process of law under Article 1, Section 13 of the Constitution of the State of California, and of privileges guaranteed by Article 1, Section 21 of said Constitution.

Discrimination because of race is constitutionally justified only when required by pressing public necessity, under circumstances of direct emergency and peril. No such necessity warrants the enforcement of said Statute against the defendants. The California Alien Land Law was conceived in race prejudice and as enforced against the defendants has the effect of penulizing the deefndants solely because of race.

[fol. 37] *Korematsu* v. *United States*, (United States Supreme Court), 89 L. Ed. (Adv. Op.) 202

Ex Parte Endo, (United States Supreme Court), 89 L. Ed. (Adv. Op.) 219

Ex Parte Kawato, 317 U. S. 69-73, 87 L. Ed. 58-61

Yu Cong Eng. v. *Trinidad*, 271 U. S. 500, 70 L. Ed. 1059

Boyd v. *Frankfort*, 117 Ky. 199

Opinion of Justices, 207 Mass. 601

Yick Wo v. *Hopkins*, 118 U. S. 356-369, 30 L. Ed. 220

Cf. *Estate of Yano*, 215 Cal. 166 and *People* v. *Fujita*, 215 Cal. 166

Although the Supreme Court has upheld the California Alien Land Law in *Terrace* v. *Thompson* (1923) 263 U. S.

197, 68 L. Ed. 225, and in other companion cases over twenty years ago, many living waters have run under the bridges of the Constitution; and these twenty year old cases are not controlling, so far as the application and enforcement of the Statute, as against the particular defendants herein, and in 1945, are concerned.

A statute constitutional at one time and under certain sets of circumstances may be invalid at a later time and under different circumstances.

[fol. 38] Cf. *Chastleton Corp.* v. *Sinclair*, 264 U. S. 543, 547, 68 L. Ed. 841, 843;

Block v. *Hirsch*, 256 U. S. 135, 154, 65 L. Ed. 865, cited with approval in *Korematsu* v. *United States*, supra at 89 L. Ed. (Adv. Op.) 202, 205.

IV

None of the defendants are aliens, ineligible for citizenship; hence the California Alien Land Law is not applicable to any of them. The Federal Naturalization Statute as amended permits all of the defendants to become naturalized upon honorable service in the land or naval forces of the United States during the present war.

Title 8 U.S.C., Sec. 1001, Nationality Act of 1940 as amended. (2 Federal Code Annotated, Supplement p. 280)

Respectfully submitted,

A. L. Wirin and J. B. Tietz, Hugh E. Macbeth and Hugh E. Macbeth, Jr., by A. L. Wirin, Attorneys for Demurring Defendants.

[fol. 39] AFFIDAVIT OF SERVICE OF DEMURRER
(C.C.P. 1013A)

STATE OF CALIFORNIA,
County of Los Angeles, ss:

Dixie Mitchell, being first duly sworn, says: That affiant is a citizen of the United States and a resident of the County of Los Angeles; that affiant is over the age of eighteen years and is not a party to the within and above entitled cause; that affiant's business address is 257 S. Spring St., Los Angeles 12. That on the 16th day of February 1945, affiant served the within Demurrer on the Attorney for

plaintiff in said action by placing a true copy thereof in an envelope addressed to the attorney of record for said Demurrer, at the business/residence address of said attorney, as follows: "Duane J. Carnes, Deputy, Office of District Attorney, 302 Civic Center, San Diego, California." and by then sealing said envelope and depositing the same, with postage thereon fully prepaid, in the United States Postoffice at Los Angeles, California, where is located the office of the attorney for the person by and for whom said service was made.

That there is delivery service by United States mail at the place so addressed or/and there is a regular communication by mail between the place of mailing and the place so addressed.

Dixie Mitchell.

[fol. 40] Subscribed and sworn to before me this 16th day of February, 1945. ——, Notary Public in and for the County of Los Angeles, State of California.

[fol. 41] [File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF SAN DIEGO

[Title omitted]

DEFENDANTS' SUPPLEMENTAL MEMORANDUM ON DEMURRER—Filed March 2, 1945

The complaint fails to state a cause of action in that it recites only that some of the defendants are aliens of the Japanese race and not eligible to become citizens because thereof. Under the naturalization law as amended they are not now ineligible for citizenship solely because of race.

Terrace v. *Thompson*, 263 U. S. 197, 68 L. Ed. 255 and *Porterfield* v. *Webb*, 263 U. S. 225, 86 L. Ed. 278, are not binding because they rest upon a provision of the Naturalization Act, then, but not now, in force. In 1923, the Naturalization Act (Title 8, U. S. C., Sec. 359) limited naturalization to "free white persons and persons and aliens of African nativity." In 1942, the Naturalization Act was amended (Title 8, U. S. C., Sec. 1001) so that notwithstanding the express racial limitations to naturalization thereto-

[fol. 42] fore provided for (Title 8 U. S. C., Sec. 703), and further notwithstanding any limitations to naturalization upon alien enemies (8 U. S. C., Sec. 726), "any person not a citizen, regardless of age, who has served or hereafter serves honorably in the military or naval forces of the United States may be naturalized". And such persons are expressly exempted from the requirement of paying a fee, from the five year period of residence and from being able to speak the English language—conditions required of all other persons.

The history of the Naturalization Act discloses a growing purpose on the part of Congress, first to limit, and then to eliminate, race as a qualification for, or condition precedent to citizenship.

Thus, prior to the Civil War, only "free white persons" were admitted to citizenship. After the Civil War, Negroes were eligible. When the Naturalization Act was incorporated in the Nationality Act of 1940, American Indians who had been theretofore excluded were included, as were Filipinoes having honorable service in the United States Army. (8 U. S. C. 703). By a 1943 amendment to Sec. 703, persons of Chinese descent are eligible to citizenship. (Act of December 17, 1943, Sec. 3; C. 344, 57 Stat. 601).

It seems therefore that race alone is now no longer an insurmountable obstacle to or a complete prohibition against naturalization. To be sure, before a member of the Japanese race may be admitted to citizenship, he must first [fol. 43] serve in the armed forces during this war; he is, however, as already indicated, exempt from requirements such as residence, payment of fee, speaking the English language, imposed upon persons not having thus served in the armed forces.

Furthermore, no person is entitled to, or "eligible" to citizenship (except only if he has served in the armed forces) unless he meets the residence and character requirements (8 U. S. C., Sec. 707) and files his declaration of intention in good faith (8 U. S. C. Sec. 704). Moreover, certain other persons are not eligible for citizenship if they are deserters (8 U. S. C. Sec. 706) or if they have certain undesirable beliefs, as for example, in anarchism, sabotage or violence, (8 U. S. C. Sec. 705). None of these disqualifications is alleged in the Complaint against any of the defendants.

Certain is it that persons of the Japanese race by virtue of Sec. 1001, are eligible for naturalization; the very heading of that Section reads: "Persons with honorable service in armed forces eligible for naturalization."

It is to be noted that the major basis for the Supreme Court's sustaining the constitutionality of the California Alien Land Law in 1923 was that the State classification was reasonable because based upon a federal classification which was in the discretion and was reasonable. Thus in *Terrace* v. *Thompson* at p. 220 (68 L. Ed. 276) the Court [fol. 44] stated: (Italics supplied)

> "Congress is not trammeled, and it may grant or withhold the privilege of naturalization upon any grounds or without any reason, as it sees fit. But it is not to be supposed that its acts defining eligibility are arbitrary or unsupported by reasonable considerations of public policy. The *state properly may assume that the considerations upon which Congress made such classification are substantial and reasonable.*"

Since eligibility to naturalization has been now substantially altered by Congress, the classification in the California Alien Land Law, modeled after a former and now repealed classification, must fall. In any event, the racial classification in the California Alien Land Law does not apply to any of the defendants since each of them is now eligible for citizenship, their race and place of birth to the contrary notwithstanding.

II.

The California Alien Land Law is unconstitutional in that it discriminates against persons solely because of race.

1. *Present Constitutional Test Applicable To Classification Because of Race.*

[fol. 45] The present constitutional test is that treatment of a person because of membership in a particular racial group is constitutionally warrantable only when required by "pressing public necessity", *Korematsu* v. *United States*, 89 L. Ed. (Adv. Op.) 202, 203. Racial discrimination is justified only "under circumstances of direct emergency and peril", *Korematsu* v. *United States*, supra, at p. 205.

For, as the Supreme Court has declared, "Loyalty is a matter of the heart and mind, not of race, creed, or color",

Ex parte Endo, 89 L. Ed. (Adv. Op.) 219, 220. The reason for the ruling, particularly as applicable to persons of Japanese descent is thus stated by Justice Douglas for the Supreme Court in the Endo case, quoting President Roosevelt:

> "Americans of Japanese ancestry, like those of many other ancestries, have shown that they can, and want to, accept our institutions and work loyally with the rest of us, making their own valuable contribution to the national wealth and well-being. In vindication of the very ideals for which we are fighting this war it is important to us to maintain a high standard of fair, considerate, and equal treatment for the people of this minority as of all other minorities."

The *Endo* and *Korematsu* decisions are the natural heirs to the judicial philosophy expounded by Justice Black for the Supreme Court in *Ex parte Kawato*, 317 U. S. 69, 73; 87 [fol. 46] L. Ed. 58. In upholding the right of a person of Japanese descent, normally an "alien enemy" to seek justice in the court of the United States, the Court took the view that:

> "'Alien enemy' as applied to this petitioner is at present but the legal definition of his status because he was born in Japan with which we are at war. Nothing in this record indicates that we cannot assume that he came to America for any purpose different from that which prompted millions of others to seek our shores—a chance to make his home and work in a free country, governed by just laws, which promise equal protection to all who abide by them."

Although dissenting in result, Justice Murphy best expressed the views of the Supreme Court upon the constitutionality of racial discrimination when he concluded his Opinion in the *Korematsu* case thus (*Korematsu* v. *United States*, 89 L. Ed. (Adv. Op.) 202, 216):

> "Racial discrimination in any form and in any degree has no justifiable part whatever in our democratic way of life. It is unattractive in any setting but it is utterly revolting among a free people who have embraced the principles set forth in the Constitution of the United States. All residents of this nation are kin

> in some way by blood or culture to a foreign land. Yet [fol. 47] they are primarily and necessarily a part of the new and distant civilization of the United States. They must accordingly be treated at all times as the heirs of the American experiment and as entitled to all the rights and freedoms guaranteed by the Constitution."

While speaking in dissent in the *Korematsu* case, Justice Murphy was merely expressing the view of the Court in *Schneiderman* v. *United States*, 320 U. S. 118, 120, 87 L. Ed. 1796, 1799, upon the rights of minority groups:

> "We are directly concerned with the right of this petitioner . . . but we should not overlook the fact that we are a heterogeneous people.
>
> "In some of our larger cities a majority of the school children are the offspring of parents only one generation, if that far, removed from the steerage of the immigrant ship, children of those who sought refuge in the new world from the cruelty and oppression of the old."

Compare Justice Murphy's noteworthy concurring Opinion in *Hirabayashi* v. *United States*, 320 U. S. 87, 111, 87 L. Ed. 1774, 1791, in which Justice Murphy expressed the view that ordinarily restrictions "based upon the accident of race or ancestry" runs in defiance of constitutional guarantees. Deprivation of liberty because of a particular [fol. 48] racial inheritance, according to Justice Murphy:

> "'. . . bears a melancholy resemblance to the treatment accorded to members of the Jewish race in Germany and in other parts of Europe. The result is the creation in this country of two classes of citizens for the purposes of a critical and perilous hour—to sanction discrimination between groups of United States citizens on the basis of ancestry.'"

In manifest contradistinction to the present constitutional test and approach to discrimination because of race, in 1923 the Supreme Court applied a different standard. In *Porterfield* v. *Webb*, 263 U. S. 225, 68 L. Ed. 278, infra., the Supreme Court then applied the rule that State legislation containing classification would be upheld if there was

any rational basis for the classification, whether such classification applied to racial groups, or conventional commercial transactions.

2. *Past and Present Constitutional Tests, Applied by the Supreme Court to State Legislative Classifying Because of Race.*

In *Porterfield* v. *Webb*, supra, at p. 281, the Court in upholding the California Alien Land Law, applied in effect, the "rational basis" test; instead of the "clear and present danger test" to be discussed below. Thus the Court said:

> [fol. 49] "In the case now before us the prohibited class includes ineligible aliens only. In the matter of classification, the states have wide discretion. Each has its own problems, depending on circumstances existing there. It is not always practical or desirable that legislation shall be the same in different states. We cannot say that the failure of the California legislature to extend the prohibited class so as to include eligible aliens who have failed to declare their intentions to become citizens of the United States was arbitrary or unreasonable."

While the standard applied by the Supreme Court in *Porterfield* v. *Webb*, supra, still apply-s to "commercial transactions", where the great personal liberties guaranteed by the Bill of Rights and the Fourteenth Amendment are at issue, no such presumption of constitutionality, or assumption that facts exist warranting classification because of race, now attends state legislative fiat against a group of persons solely because of race, color or ancestry. Indeed the constitutional presumption is to the contrary; and in any event, they come before the Court denuded of the presumption of constitutionality, to be appraised by the courts through the exercise on the part of the courts of their *independent judgment*.

Thus on the one hand, in *Korematsu* v. *United States*, [fol. 50] supra, 89 L. Ed. (Adv. Op.) 202, 203, the Court began its Opinion by stating:

> "It should be noted, to begin with, that all legal restrictions which curtail the civil rights of a single racial group are immediately suspect. That is not to say that all *all* such restrictions are unconstitutional. It

> is to say that courts must subject them to the most rigid scrutiny. Pressing public necessity may sometimes justify the existence of such restrictions; racial antagonism never can."

And on the other hand, in a comparable case, in *Thomas* v. *Collins*, 89 L. Ed. (Adv. Op.) 340, 348, the independent judgment which the courts will give to such state legislature is thus stated:

> "That judgment in the first instance is for the legislative body. But in our system where the line can constitutionally be placed presents a question this Court cannot escape answering independently, whatever the legislative judgment, in the light of our constitutional tradition."

In other words, the presumption of the constitutionality and the presumption of the reasonableness of classification, are balanced and offset by the preferred place accorded such great freedoms including freedom from discrimination solely because of race.

[fol. 51] The Supreme Court itself said in *Thomas* v. *Collins*, supra, at p. 347:

> "The case confronts us again with the duty our system places on this Court to say where the individual's freedom ends and the State's power begins. Choice on that border, now as always delicate, is perhaps more so where the usual presumption supporting legislation is *balanced* by the preferred place given in our scheme to the great, the indispensable democratic freedoms secured by the First Amendment." (Italics supplied.)

The Court expressly rejected the "rational basis" test for such state legislation. It summarized the contention of the State of Texas in the case, thus: (at p. 346)

> "In short, the State would apply a "rational basis" test, appellant one requiring a showing of "clear and present danger."

In a footnote the Court made the following reference to the claim of the State, rejected by the Court, a claim strik-

ingly similar to one sustained by the Court, in Porterfield v. Webb. The footnote reads:

> "According to the brief, "The analogy is that interstate commerce like freedom of religion, speech and press is protected from undue burdens imposed by the States, yet the States still have authority to impose [fol. 52] regulations which are reasonable "in relation to the subject."

These latest rulings by the Supreme Court rejecting the standard applied by it in *Porterfield* v. *Webb*; 263 U. S. 225, 86 L. ed. 278, supra, are merely in line with a number of recent decisions especially concerned in the protection of minority racial and political groups from discrimination.

The pioneer statement enunciating this new and different standard was made for the Court by Chief Justice Stone in *United States* v. *Caroline Produce Co.*, 304 U. S. 144, 152, 82 L. ed. 1234, 1241. (Cited with approval in *Thomas* v. *Collins* supra at p. 345.) Thus the Court first drew the distinction between legislative judgment involving "ordinary commercial transactions" and such judgment affecting civil rights. Said the Court:

> "Even in the absence of such aids the existence of facts supporting the legislative judgment is to be presumed, for regulatory legislation affecting ordinary commercial transactions is not to be pronounced unconstitutional unless in the light of the facts made known or generally assumed it is of such a character as to preclude the assumption that it rests upon some rational basis within the knowledge and experience of the legislators."

With respect to legislation affecting civil rights the Court expressed the view that:

> [fol. 53] "There may be narrower scope for operation of the presumption of constitutionality when legislation appears on its face to be within a specific prohibition of the Constitution, such as those of the first ten amendments, which are deemed equally specific when held to be embraced within the Fourteenth."

In the footnote, the Court took particular note of legislation aimed at particular religious, national and racial minorities and left the matter with this inquiry:

> ". . . whether prejudice against discrete and insular minorities may be a special condition, which tends seriously to curtail the operation of those political processes ordinarily to be relied upon to protect minorities, and which may call for a correspondingly more searching judical inquiry."

And so, in *Schneider* v. *Irvington*, 308 U. S. 161, 84 L. ed. 165 the rule is thus expressed:

> "In very case, therefore, where legislative abridgment of the right is asserted, the courts should be astute to examine the effect of the challenged legislation.
>
> "Mere legislative preferences or beliefs respecting matters of public convenience may "well support reg-[fol. 54] ulations directed at other personal activities, but be insufficient to justify such as diminishes the exercise of rights so vital to the maintenance of democratic institutions. And so, as cases arise, the delicate and difficult task falls upon the courts to weigh the circumstances and to appraise the substantiality of the reasons advanced in support of the regulation of the free enjoyment of the right."

And in *Thornhill* v. *Alabama*, 310 U. S. 88, 95, 84 L. ed. 1093, 1099, the Court definitely determined that:

> "Mere legislative preference for one rather than another means for combating substantive evils, therefore, may well prove an inadequate (96) foundation on which to rest regulations which are aimed at or in their operation diminish the effective exercise of rights so necessary to the maintenance of democratic institutions. It is imperative, that when the effective exercise of these rights is claimed to be abridged, the courts should 'weigh the circumstances' and 'appraise the substantiality of the reasons advanced' in support of the challenged regulations."

[fol. 55] Unaccompanied by presumption of constitutionality, assumptions that the legislation is supported by facts

warranting such classification, inference that it has a "rational basis," weighed and appraised by the Courts exercising an independent judgment, the test for legislation aimed at, affecting only a particular race, is the "clear and present danger."

Although applied originally to "free speach cases" the rule has now been equally extended to situations involving racial discrimination. Thus in *Korematsu* v. *United States*, supra at p. 205, military orders aimed against persons of Japanese descent were upheld only because they were made at "a critical hour" in our Nation's history; and such treatment was upheld only because it seemed warranted because of "circumstances of direct emergency and peril." Justice Murphy explained the formula more fully. To him, racial treatment was constitutionally justifiable only in the face of public danger, that is "imminent and impending", *Korematsu* v. *United States*, supra, at p. 212.

The rule is best expounded in *Thomas* v. *Collins*, 89 L. ed. (Adv. Op.) supra, 340, 349. It is to the effect that an intrusion upon any of the great traditional American freedoms—not the least of which is the right to be free from discrimination because of race—is permitted "only if grave and impending public danger requires this."

Again in the *Thomas* case, the Court explained (at p. [fol. 56] 346) by quoting from *West Virginia State Bd. of Educ.* v. *Barnette*, 319 U. S. 624, 639, 87 L. Ed. 1628, 1638, that these great American rights are "susceptible of restriction only to prevent grave and immediate danger to interests which the State may lawfully protect."

No showing has, or can be made by the Plaintiff that the enforcement of the Alien Land Law against the defendants or at all, is constitutionally justified because of a clear and present danger to the State of California or to the United States.

III

Although the Statute Is Upheld as Valid at One Time and Under Certain Circumstances It May Be Adjudged Unconstitutional at Another Time and Under a Different Set of Circumstances.

Thus in *Nashville, C. & St. L. R. Co.* v. *Walters*, 294 U. S. 405, 79 L. ed. 949, the Supreme Court speaking

through Justice Brandeis laid down the following rule (at p. 415):

> "A statute valid as to one set of facts may be invalid as to another. A statute valid when enacted may become invalid by change in the conditions to which it is applied."

The Court rejected the contention of the Attorneys for the State of Tennessee, that the Courts could not:

> [fol. 57] ". . . 'any more' consider 'whether the provisions of the act in question have been rendered burdensome or unreasonable by changed economic and transportation conditions', than it could consider changed mental attitudes to determine the constitutionality and enforceability of a statute."

The Supreme Court said that "a rule to the contrary is settled by the decisions of this Court."

The following three changes in circumstances have taken place since *Porterfield* v. *Webb*, 263 U. S. 225, 86 L. ed. 278:

1. Congress has changed the provisions of the Naturalization Act so as to no longer *to* prescribe naturalization on the part of persons of Japanese descent solely and exclusively on account of race.

2. The Supreme Court has changed the rule affecting judicial standards applicable to the California Alien Land Law.

3. History and the Supreme Court have gone forward in the recognition that "racial discrimination in any form and in any degree has no justifiable part whatever in our democratic way of life."

Justice Murphy concurring in *Hirabayashi* v. *United States*, 320 U. S. 81, 111, 87 L. ed. 1774, 1791:

> [fol. 58] "Distinctions based on color and ancestry are utterly inconsistent with our traditions and ideals. They are at variance with the principles for which we are now waging war. We cannot close our eyes to the fact that for centuries the Old World has been torn by racial and religious conflicts and has suffered the worst kind of anguish because of inequality of treatment for different groups. There was one law

for one and a different law for another. Nothing is written more firmly into our law than the compact of the Plymouth voyagers to have just and equal laws. To say that any group cannot be assimilated is to admit that the Great American experiment has failed, that our way of life has failed when confronted with the normal attachment of certain groups to the lands of their forefathers. As a nation we embrace many groups, some of them among the oldest settlements in our midst, which have isolated themselves for religious and cultural reasons.

"Today is the first time, so far as I am aware, that we have sustained a substantial restriction of the personal liberty of citizens of the United States based upon the accident of race or ancestry. Under the curfew order here challenged no less than 70,000 [fol. 59] American citizens have been placed under a special ban and deprived of their liberty because of their particular racial inheritance. In this sense it bears a melancholy resemblance to the treatment accorded to members of the Jewish race in Germany and in other parts of Europe. The result is the creation in this country of two classes of citizens for the purposes of a critical and perilous hour—to sanction discrimination between groups of United States citizens on the basis of ancestry."

IV.

The Cause of Action Is Barred by the Statute of Limitations. Memorandum on the Application of the Statutes of Limitation to an Action by the State of California to Declare an Escheat of Real Property Under the Alien Land Law (Gen. Laws 260-261)

1. The action prosecuted by the State is an "action" within the contemplation of the Code of Civil Procedure of the State of California, and more particularly within the contemplation of Part II, Title II thereof re time of commencing civil actions.

CCP 22, 363.

2. The action herein brought by the State, being based upon statutes (Gen. Laws Sec. 260 and 261, Acts of 1913, [fol. 60] amend. 1920, 1923, 1927 and 1943) which statutes

do not provide a limitation as to the time within which an action based thereon is to be commenced, the appropriate provisions of Title II of Part II of the Code of Civil Procedure control such time limitations.

CCP 312

3. The cause of action to enforce the escheat accrues as of the date of the acquisition of property in violation of the terms of the Alien Land Law, and is not a continuing cause of action.

A. The sole ground provided in the statutes for an action for the escheat proceedings is the improper *acquisition* of the property involved, and not the use of the land by an ineligible alien.

Act 260, Sec. 5; Act 261, Secs. 7 and 9.

B. There are other remedies for the unlawful use and occupancy, etc. of the land.

Act 261, Sec. 10b (injunction) and Sec. 10c (declaratory relief).

relief)

There are also criminal penalties provided.

Act 261, Sec. 10a.

4. Even if it be determined that the above-mentioned code provisions did not comprehend within their limitations, an action by the State for escheat under the Alien [fol. 61] Land Law, there are other considerations of policy and derived from the Code of Civil Procedure which would urge some such limitation upon the time within which the State should commence action.

A. The all inclusiveness of Part II, Title II of the Code of Civil Procedure referring to the time of commencement of actions and in particular Sec. 343 of the CCP indicate that all causes of action are limited in time of commencement unless it is expressly provided otherwise.

CCP 343 (omnibus section);

County and City of San Francisco v. *Luning*, 73 Cal. 610.

B. The policy is similar with regard to actions by the State (CCP 345) for even more heinous offenses than the one at hand.

Cal. Pen. Code Secs. 799, 800, 801.

there being a three year limitation on the prosecution of the crime of treason.

C. Such a right of action in the State without limitation as to time of enforcement would result in insecurity of land titles in subsequent purchasers and encumbrancers, and in general would be oppressive.

City of San Diego v. *Higgins*, 115 Cal. 170, 174.

[fol. 62] 5. This is an action or proceeding in a court of justice by which one party prosecutes another for the declaration, enforcement, or protection of a right, the redress or prevention of a wrong, or the punishment of a public offense. Sec. 22 CCP.

A. Judicial action is necessary to perfect title to the land in dispute in the State, since in the case of statutory forfeiture title is not complete until there is a judicial determination of the facts.

Traffic Truck Sales Co. v. *Justices Court*, 192 Cal. 377;
People v. *Broad*, 216 Cal. 1.

Repeal of the statute providing for automatic forfeiture to the State before the judicial determination of the matter defeats the rights of the State in the premises.

Lemon v. *L. A. Term. Ry. Co.*, 38 Cal. App. (2) 659.

B. Therefore the action by the State is an *ordinary action* either in the nature of a quiet title action or in the nature of an action to enforce a lien (if not on a statutory liability to enforce a forfeiture, which is not admitted).

6. If the action by the state is in the nature of an action to enforce a statutory lien, the right of action is limited as to the time of commencement.

[fol. 63] *People* v. *Hulbert*, 71 Cal. 72;
City of San Diego v. *Higgins*, 115 Cal. 170, 174.

7. The question of which statute of limitations is applicable and controlling.

A. The present action by the State to enforce an escheat for violation of the Alien Land Law may be characterized as follows:

1. It is an action upon a statutory liability;
2. It is an action concerning an interest in real property;
3. It is an action to enforce a penalty or forfeiture.

> "A forfeiture is the divestiture of specific property without compensation in consequence of some default or act forbidden by law".
> 25 Cor. Jur. 1170.
> See *Hansen* v. *Vallejo Elect. Light Co.*, 182 Cal. 492.

B. Difficulties arise as to which statute of limitations is applicable because the statutes are not mutually exclusive in their definitions of contemplated cases, and the present case involves elements which might bring it within at least [fol. 64] 5 such statutes. See *Miller & Lux v. Batz*, 131 Cal. 402.

1. CCP 315 if the property element is definitive;
2. CCP 338 (1) if the statutory basis of liability is controlling;
3. CCP 338 (2) if the trespass element is controlling;
4. CCP 340 (2) if the statutory forfeiture element is controlling;
5. CCP 343 if none of the above outlined elements is definitive.

C. CCP 315 is not controlling.

CCP 315 only applies to actions involving the matter of adverse possession (in the traditional meaning of that phrase).

Nat. Soda Prod. Co. v. *City of L. A.*, 23 Cal. (2) 204;
People v. *Center*, 66 Cal. 551, 554.

D. Although Title II of Part II of CCP is entitled "Time of Commencing Actions Other Than for the Recovery of Real Property", its sections have been applied to cases involving the recovery of real property by the state when such recovery has been based upon a statutory liability.

[fol. 65] 1. Action to enforce swamp land reclamation assessment which was only a lien upon the land and involved no personal liability. CCP 338 (1) applied.
People v. *Hulbert*, 71 Cal. 72.

2. Where a tax has the effect and force of a judgment and the incidental effect of a lien, as well as creating personal liability, CCP 338 (1) applies, because it is oppressive to have no limitation of time of commencement of action and leads public officers to be negligent in their duties.

City of San Diego v. *Higgins*, 115 Cal. 170, 174.

3. Action to establish a trust on certain lands and incidentally for an accounting. CCP 343 was applied to the action.

Hannah v. *County*, 175 Cal. 763, 768.

4. Action to enforce a tax lien on certain real property. CCP 338 (1) applied.

Chambers as Controller v. *Gibson*, 178 Cal. 416.

5. Apparently an action by a reversioner to recover possession of real property from a grantee of the life tenant. CCP 338 applied.

Thompson v. *Pac. Elect. Ry. Co.*, 203 Cal. 578.

[fol. 66] Accordingly, the causes of action herein are subject to the Statute of Limitations, and barred by the one year statute, because actions upon a statute for a penalty or forfeiture.

Respectfully submitted, Hugh E. Macbeth and Hugh E. Macbeth, Jr., A. L. Wirin and J. B. Tietz, by A. L. Wirin, Attorneys for Plaintiffs.

[fol.67] Filed Mar. 2, 1945. J. B. McLees, Clerk, by D. Shultz, Deputy

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF SAN DIEGO

No. 120450

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,

vs.

THE FEDERAL LAND BANK OF BERKELEY, et al., Defendants

No. 121200

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,

vs.

FRED Y. OYAMA, Defendant

OPINION ON DEMURRERS TO COMPLAINTS—Filed March 2, 1945

[fol. 68] In the first of the above cases the amended petition, insofar as its contents need for the purposes of this opinion be recited, alleges the corporate capacity of the defendant The Federal Land Bank of Berkeley, alleges that the defendants Yoshitaro Yoshimura, Torao Yoshimura and Masami Hirose have at all of the times involved been of the Japanese race, natives and subjects of Japan and not eligible to become citizens of the United States of America; that the defendant Mather Masako Yasukochi, formerly Mather Masako Yasukochi, was and is of the Japanese race but was born in Orange County, California and is now married to the defendant Masami Hirose; that since July 9, 1935, defendant The Federal Land Bank of Berkeley has been and it now is the owner of certain described agricultural lands within the County of San Diego, State of California; that on or about July 25, 1936, defendant The Federal Lank Bank of Berkeley executed and delivered a written agreement purporting to be an agreement to sell said land to defendant Mather Masako Hirose, then Mather Masako Yasukochi for $21,000.00 payable $4200.00 down, and the rest in installments, part of which remain due and unpaid; that the consideration for said agreement (so far as paid) was paid by the defendants Yoshitaro Yoshimura

and Tarao Yoshimura; that no part of the consideration for said agreement was paid by defendant Mather Masako Hirose, formerly Mather Masako Yasukochi, except that the said $4200.00 down payment to The Federal Land Bank [fol. 69] of Berkeley was paid by a check signed by said Mather Masako Yasukochi on a bank account the funds of which were furnished to said Mather Masako Hirose, formerly Mather Masako Yasukochi, by the defendants Yoshitaro Yoshimura and Torao Yoshimura; and that said Mather Masako Yasukochi was then a minor aged 19 years and had no property other than the funds so supplied to her; that it was understood and agreed between defendants Yoshitaro Yoshimura, Torao Yoshimura and said Mather Masako Yasukochi that said agreement of purchase should be taken in the name of the latter and said real property be subsequently conveyed to her, for the reason that defendants Yoshitaro Yoshimura and Torao Yoshimura were aliens ineligible to become citizens of the United States of America or to acquire, hold, possess, enjoy, cultivate, occupy, transfer or transmit said real property or any part thereof; that on or about July 25, 1936, defendants Yoshitaro Yoshimura and Torao Yoshimura entered into the possession of said real property and thereafter continued to possess, enjoy, use and occupy the same as their own, and in their own right enjoy the beneficial use of said real property for agricultural purposes and the beneficial use of all the crops grown thereon; and that the defendant Mather Masako Hirose, formerly Mather Masako Yasukochi, never possessed, enjoyed and cultivated or occupied all or any part of said real property nor did she at any time have the [fol. 70] beneficial use of all or any of the same or of any of the crops therefrom or of the proceeds of such crops, nor did she pay any of the expenses of the cultivation of said real property or any of the taxes assessed thereon, all of which were paid by defendants Yoshitaro Yoshimura and Torao Yoshimura; that defendant Mather Masako Yasukochi, now Mather Masako Hirose, has at all times involved lived elsewhere than on the said real property; that defendants Yoshitaro Yoshimura and Torao Yoshimura claim said real property as their own and have offered to sell the same and to cause defendant The Federal Land Bank of Berkeley to convey good title thereof to their prospective purchaser.

The relief sought is a judgment declaring the escheat of the real property involved to the State of California, under the provisions of the "Alien Property Initiative Act of 1920", as amended, for violation and attempted evasion of the provisions thereof, subject to the right of the defendant The Federal Land Bank of Berkeley to be paid the unpaid residue of the selling price, and that except for the right of said The Federal Land Bank of Berkeley to such payment, it be adjudged that none of the defendants have any rights in the real property or any part thereof as against the State.

The complaint in the other case (No. 121200) sets up two causes of action: In the first of these causes of action it is alleged that at all of the times involved the defendants [fol. 71] Kajiro Oyama, also known as K. Oyama, Kohide Oyama, formerly Kohide Kushino, and Ririchi Kushino, have been persons of the Japanese race, natives of the Empire of Japan and subjects of that empire and by reason thereof not eligible to citizenship under the laws of the United States; that the defendant Fred Y. Oyama, also known as Fred Yoshihiro Oyama, is of the Japanese race but was born in San Diego County, California on or about March 23, 1928; that the defendant June Kushino is of the Japanese race, but was born in San Diego County, California, on March 4, 1921; that on March 22, 1935, the defendant Kajiro Oyama, also known as K. Oyama, was, in the Superior Court of the State of California in and for the County of San Diego, appointed guardian of the person and estate of said Fred Yoshihiro Oyama, a minor, and qualified as such guardian, and has ever since been such guardian; that the defendant June Kushino, attained the age of 21 years on March 4, 1942, but that during her minority the defendant Ririchi Kushino was the guardian of her person and estate. It is alleged that on or about August 18, 1934, the defendants Kajiro Oyama, also known as K. Oyama, and Kohide Oyama, formerly Kohide Kushino, purchased certain described agricultural land in the County of San Diego, State of California, and that on or about that date a purported conveyance of the same was made by one Yonezo Oyama, who was named as grantor therein, and said Fred Y. Oyama was therein named as grantee, and that the purchase [fol. 72] price was $4000.00, which was paid to said Yonezo Oyama by defendants Kajiro Oyama and Kohide Oyama. It is alleged that upon the execution and delivery of said

purported deed, that is, on or about August 18, 1934, the defendants Kajiro Oyama and Kohide Oyama, entered into the possession of said real property and have ever since occupied and continue to occupy, use enjoy and cultivate the same as their own and have had in their own right the beneficial use and enjoyment of said lands for agricultural purposes, and the beneficial use of the crops grown thereon. It is claimed that the purchase of this property and the taking of the deed in the name of Fred Y. Oyama is a mere subterfuge, a fraud upon the People of the State of California and a violation of the Alien Land Law of California and done by said defendants Kajiro Oyama and Kohide Oyama wilfully, knowingly and with intent, in violation of said Alien Land Law, to obtain the possession, use, occupancy, ownership and enjoyment of said agricultural lands for their own use. It is further alleged that defendant Kajiro Oyama, also known as K. Oyama, has failed to render any account to the Superior Court for his receipts and disbursements as guardian of said Fred Y. Oyama, also known as Fred Yoshihiro Oyama, nor filed any annual or other account or report with the Secretary of State of California as required by Section 5 of the Alien Land Law, nor filed any account or report in said matter with the County Clerk of San Diego County, nor served any such account [fol. 73] on the District Attorney of said County; but that in conducting business affecting said real property he has used the names "Fred Oyama" and "Y. Oyama" and maintained checking accounts in those names for the purpose of evading and violating the Alien Land Law of California.

The second cause of action in this case No. 121200 incorporates various allegations of the first cause of action including those having to do with the race, nativity, citizenship and status of the said parties and goes on to allege that on December 17, 1937, the Superior Court of the State of California in and for the County of San Diego in the matter of the Guardianship of said June Kushino, made an order confirming the sale for $1500.00 to said Fred Y. Oyama, of certain described land in the said county, a copy of which order was recorded in the recorder's office of said county; that the record title to this property stands in the name of one John Mares, who died intestate in said county on or about December 20, 1943, and that defendant Lawrence W. Junker is the administrator of his estate, but that

defendant Ririchi Kushino purchased said real property from said John Mares in his lifetime, and that Mares executed and delivered to said Ririchi Kushino a deed purporting to convey said real property to said June Kushino. It is alleged that upon the making and recording of said order confirming said purported sale from said June Kushino to said Fred Y. Oyama, the defendants Kajiro Oyama and Kohide Oyama, entered into the possession [fol. 74] of said real property and have ever since occupied, used, enjoyed and cultivated the same as their own and have had in their own right the beneficial use and enjoyment of said land for agricultural purposes, and the beneficial use of the crops grown thereon, and that all of said acts were done by said Kajiro Oyama and Kohide Oyama, wilfully, knowingly and with intent to violate the Alien Land Law of the State of California. The complaint asks that the land described in the first cause of action be decreed to have escheated to the State of California as of August 18, 1934, and that described in the second cause of action as of December 17, 1937, and that all of the defendants be forever barred from asserting any claim, right or title therein as against the State of California.

A demurrer has, in each case, been filed on behalf of the party in whose name the conveyance attacked was taken; and on behalf of those for whose actual use and benefit it is claimed to have been taken, as well as by certain other persons made defendants for the purpose of barring any claims that they may assert to the respective properties involved.

The points urged on behalf of the defendants upon the hearing on the demurrers were these:

First: That each action is barred by the Statute of Limitations.

Second: That changes in Federal legislation respecting [fol. 75] naturalization have superseded the Alien Land Laws of California, and that these are no longer effective.

Third: That in any event, under the present interpretation by the Supreme Court of the United States of provisions of the Federal Constitution, the constitutionality of the Alien Land Laws of this State can no longer be upheld.

(1) Considerable stress has been laid on the provisions of section 312 of the Code of Civil Procedure to the effect that:

> "Civil actions, without exception, can only be commenced within the periods prescribed in this title, after the cause of action shall have accrued, unless where, in special cases, a different limitation is prescribed by statute."

I am not sure that I quite understand why this section should be particularly relied on, but the claim may be that by virtue of this section *every* cause of action is subject to some limitation of time, and that, unless some more specific limitation can, in a given case, be pointed out, such case must be classified as falling within some one of the limitations prescribed by the further provisions of the Title (i. e. Title 2 of Part 2 of that Code). If that be the construction contended for, however, I think it entirely too broad. In my view, section 312 should be construed as though it read:

> [fol. 76] "Civil actions, *of any of the classes specified in this title*, without exception, can only be commenced within the periods prescribed in this title, after the cause of action shall have accrued, unless where, in special cases, a different limitation is prescribed by statute."

That would amount to saying merely the general rules laid down in the succeeding sections of the title are to be deemed applicable to all cases falling within this provision, in the absence, but only in the absence, of some other and more specific statute applicable to the facts of a particular case.

Passing, then, to the particular statuory provisions the applicability of which has been discussed, the first in order is section 315, reading:

> "The people of this state will not sue any person for or in respect to any real property or the issues or profits thereof, by reason of the right or title of the people to the same, unless—
>
> 1. Such right or title shall have accrued within ten years before any action or other proceeding for the same is commenced; or,

2. The people, or those from whom they claim, shall [fol. 77] have received the rents and profits of such real property, or some part thereof, within the space of ten years."

It is to be noted at the outset that the first subdivision of this section, as judicially construed, does not mean precisely what it seems to say. The intention was not to inhibit the State from suing to establish its title to property merely because it had held such title for more than ten years prior to commencing the action. As is said in 16 Cal. Jr. 435-436:

> "The words 'right or title' used in the first subdivision refer to the right or title of the state to sue, and not to the right or title upon which the action is based. If this were not so, the state could not maintain an action in respect to land which it held title for more than ten years prior to the beginning of the action, although the invasion of its rights which created the cause of action had been within that period." (See *People* v. *Banning Co.*; 167 Cal. 643, 646 citing *People* v. *Center*, 66 Cal. 564.)

In the instant case, I take it that whatever right the State has to sue accrued as of the date of the transaction by which it is claimed that the Alien Land Law was violated. So [fol. 78] considered, Section 315 could have no effect as a bar in the case of *The People* v. *The Federal Land Bank of Berkeley*, No. 120450, because the transaction complained of did not occur until July 25, 1936, and the action, having been commenced on July 17, 1944, was brought well within the ten years allowed by the statute. So, too, with the transaction involved in the second cause of action in the case of the *People of the State of California* v. *Oyama*, et al., No. 121200, the same having occurred on December 17, 1937, it is manifest that, under the ten-year statute, if applicable, the action is not barred. The situation would be otherwise, however, with the first cause of action in the Oyama case. There, the transaction complained of being stated to have occurred on August 18, 1934, and the action not having been filed until August 28, 1944, it is patent that if section 315 applies the case is, as to that cause of action, barred. It is true that no prescriptive right under Section 1007 of the Civil Code could operate to confer a title on persons ineligible under the law to acquire one, but for all of that, if

Section 315 of the Code of Civil Procedure applies, the State, whatever its substantive right might be, would be, as to that cause of action, without a remedy.

It has been suggested, however, that the limitation really applicable is Section 340, Subdivision 1, prescribing one year after the cause of action accrues in the case of an [fol. 79] action brought upon a statute for a penalty or forfeiture. It may be doubted, even if the action were for a penalty or forfeiture, whether that provision would have any application since it is in terms made applicable only when the action is given to an individual or to an "individual and the State", whereas an action to declare an escheat lies in favor of the State alone. However, that may be, it must, in the light of *The People of the State of California* v. *Nakamura*, 125 Cal. App. 268 be now considered and held that an action to declare an escheat is not an action for a penalty or forfeiture, and that, therefore, no limitation of time for the enforcement of a statutory penalty or forfeiture can be said to apply.

Since the oral argument I am in receipt of a letter from defendants' counsel, saying in substance that in their urging other provisions of the Statute of Limitations they failed at the oral argument to stress their main reliance which, the letter states, is on Subdivision 1 of Section 338 of the Code of Civil Procedure prescribing a three year limitation upon "an action upon a liability created by statute other than a penalty or forfeiture." The inapplicability of this provision, however, is obvious. According to Webster's New International Dictionary a "liability" is:

First—"State or quality of being liable; as the liability of an insurer."

Second—"That which one is under obligation to pay, or [fol. 80] for which one is liable. Specif., in the pl., one's pecuniary obligations, or debts, collectively—opposed to assets."

Third. "*Accounting.* A debt; an amount which is owed, whether payable in money, other property or services."

But this present action is not brought to enforce as against the defendants any liability whatever, but only to determine whether or not they have as against the state any interest in the property affected.

It is true, as suggested by counsel for the demurring defendants, that mere circumstance that an action involves

land does not necessarily mean that no other statutes of limitations can apply to bar it than such as are applicable to actions for the recovery of land, and it is further suggested that since the complaints here charge that the transactions complained of were frauds, the applicable statute may be Subdivision 4 of Section 338 of the Code of Civil Procedure prescribing a three-year limitation as applicable to actions for relief on the ground of fraud or mistake. The question, however, is not what is incidentally involved but what is the gist of the cause of action, and it seems to me clear that the gist of it here is that the State claims to have title to the land and that the defendants are asserting unfounded claims and maintaining a tortious possession, all in derogation of the State's title, and, therefore, that the only one of these statutes that can with plausibility be urged, as applicable, is Section 315 of the [fol. 81] Code of Civil Procedure. Counsel for the People urge, however, that it ought not to be applied for the reason that, though actions to declare escheats under the Alien Land Law are not by express enactment excepted from its operation, nevertheless the clear policy of that law is inconsistent with the application of such a statute. As an analogy counsel refer to the case of *Weber* v. *State Board of Harbor Commissioners*, 93 U. S. 57, where, in an opinion by Mr. Justice Field, it was held that Section 315 of the California Code of Civil Procedure was ineffectual to bar the establishment, in an action between the State Board of Harbor Commissioners for the Bay of San Francisco and an individual, of the State's right to abate a wharf wrongfully erected upon its tide lands. The Court there said (p. 687):

> "Where lands are held by the State simply for sale or other disposition, and not as sovereign in trust for the public, there is some reason in requiring the assertion of her rights within a limited period, when any portion of such lands is intruded upon or occupied without her permission, and the policy of the statute would be carried out by restricting the application to such cases."

The reasoning of the Weber case is not, strictly speaking, applicable here, for I take it that property that comes to the State by escheat is not held by it in any particular

trust, as tide lands, for example, are held (*People* v. *Weber*, [fol. 82] 152 Cal. 731, 733, *Shively* v. *Bowlby*, 152 U. S. 1). Escheated lands are held by the State in its proprietary capacity and are, no doubt, subject to sale and disposition like any other lands so held. Undoubtedly, however, the policy of the electors, as embodied in the initiative law of 1920, as well as of the legislature, as evidenced by the original Alien Land Law of 1913 and various subsequent acts, would be just as much thwarted by allowing ineligible aliens to remain in possession of lands illegally held by them for more than ten years, as of lands so held by them for a lesser period, and I do not think it would be straining the function of interpretation to hold that, though it did not do so expressly, our alien land legislation by implication has excepted from the operation of Section 315 of the Code of Civil Procedure lands which ineligibile aliens have undertaken to acquire in violation of its terms.

On the whole, I incline to the view that no statute of limitations can be available to ineligible aliens to bar such actions as these here involved. As respects the other demurring defendants, it does not appear from the face of the complaints that they are or ever have been in possession of any of the property involved adversely to the State, and therefore it does not appear that any statutes of limitations have commenced to run in favor of any of them, and as to them, the proceedings amount to no more than actions to quiet title. If the facts are otherwise, they should be

. . . . . .

[fol. 83] (2)—The next point made is that the ineligibility to citizenship alleged as against the parties alleged to have undertaken to acquire the beneficial interest in the land involved is based purely on the fact that, being aliens, they are aliens of the Japanese race. As such they would, beyond question, be ineligible to become citizens were there no applicable statute except section 703 of Title 8 of the United States Code which, since the amendment of 1943, reads as follows:

> "The right to become a naturalized citizen under the provisions of this chapter shall extend only to white persons, persons of African nativity or descent, descendants of races indigenous to the Western Hemisphere, and Chinese persons or persons of Chinese de-

scent: Provided, That nothing in this section shall prevent the naturalization of native-born Filipinos having the honorable service in the United States Army, Navy, Marine Corps, or Coast Guard as specified in section 724, nor of former citizens of the United States who are otherwise eligible to naturalization under the provisions of section 717."

However, in 1942 there was added a new section numbered 1001, which so far as I need quote it, reads:

[fol. 84] "Notwithstanding the provisions of sections 703 and 726 of this title, any person not a citizen, regardless of age, who has served or hereafter serves honorably in the military or naval forces of the United States during the present war and who, having been lawfully admitted to the United States, including its Territories and possessions, shall have been at the time of his enlistment or induction a resident thereof, may be naturalized upon compliance with all the requirements of the naturalization laws except that no declaration of intention and no period of residence within the United States or any State shall be required * * *"

It is now claimed that because, so far as appears from the complaints, the former ineligible aliens, here made defendants, are eligible to join the armed forces of the United States during the present war, they have ceased to be ineligible to citizenship and, therefore, that the Alien Land Law of the State has no application to them. This argument is ingenious but seems to me to grasp at the literal employment of language rather than to regard the apparent intent with which Section 1001, *supra*, was enacted. The circumstance that in 1943 Section 703 was broadened to include, as eligible to citizenship, "Chinese persons or persons of Chinese descent", on the principle *inclusio* [fol. 85] *unius est exclusio alterius* excludes the idea that the Congress intended Section 1001 to bring persons of all races whatsoever into the category of persons eligible to citizenship. The 1943 amendment to Section 703 is in itself a legislative expression to the effect that eligibility to citizenship, within the meaning of the United States Code, can be acquired only by persons of races not named in that section, by becoming members of the armed forces of the

United States during the present war. Their entry into the armed forces was not contemplated as a mere procedural step in their quest for citizenship. It was the manifest intention that their right to citizenship should flow from their membership in the armed forces, not merely from their eligibility to join such armed forces. In the nature of things, the proportion of our population previously, for racial reasons, ineligible to citizenship who could be expected to join the armed forces during the present war, was, though not negligible, relatively small, and it is apparent that as respects eligibility to citizenship, the legislative intent in enacting Section 1001 was to create an exceptional situation as to that relatively small number of persons. If that intent was not sufficiently apparent from the terms of Section 1001 itself, it is made so by the limited nature of the 1943 amendment to Section 703, and no verbal literalism can be construed as making the whole mass of persons previously ineligible to citizenship because of race, now [fol. 86] eligible, because such few of them as the armed forces may be able to absorb will thereby become eligible.

It is true that the successive amendments of Section 703 indicate a legislative tendency to reduce exclusions from citizenship on racial grounds. However, much they may be in sympathy with that tendency, however, it is not for the courts to outstrip the legislative authority in an eagerness to accomplish that result. The function of the courts is to interpret laws, not to make them.

Moreover, it is clear from such cases as *People* v. *Nakamura*, supra, that escheats under the Alien Land Law must be held to be automatic upon the occurrence of the violations which produce them. If the proceedings for their declaration and enforcement are not penal or punitive, then such proceedings can be no more than the enforcement of rights in the State which have already vested as of the date of the acts which by legal operation brought the escheats into effect. Subsequent statutory amendments would not undo what had been fully done. If the escheats claimed have here occurred, it has, under the views expressed in *People* v. *Nakamura*, been long prior to the enactment of Section 1001 of Title 8, United States Code, to-wit: under Sections 7, 8 and 9 of our Alien Land Law, as of the respective dates of the acquisitions or transfers complained of, and they cannot, in any tenable view, have been

affected by the enactment of that federal statute, whatever [fol. 87] the effect of the latter may have been on eligibility to citizenship.

(3). I am not inclined to devote much space to further consideration of the general question of the constitutionality of the alien land legislation of this State. It has time and again been sustained. (*Terrace* v. *Thompson*, 263 U. S. 197; *Porterfield* v. *Webb*, 263 U. S. 225; *Webb* v. *O'Brien*, 263 U. S. 313; *Frick* v. *Webb*, 263 U. S. 326; *Cockrill* v. *People of the State of California*, 268 U. S. 258; *Morrison* v. *California*, 288 U. S. 591).

Whether in view of changed views on the subject of race, classifications stressing that consideration have ceased to be reasonable in such a sense as to render them obnoxious to limitations expressed in the Federal Constitution is a question not very appropriate for consideration by a nisi prius court. In that connection I can only repeat what I felt it my duty to say while sitting pro tempore on the District Court of Appeal for the Fourth District.

> "Recognizing, however, as we do, the important bearing of the pronouncement of the Supreme Court of the United States upon the discussion, we still regard it as the function, rather of the Supreme Court of the State than of any court subordinate to it, to announce changes in what has hitherto been treated within the State as the settled law with respect to the constitutionality of a given application of a state statute, un- [fol. 88] less, indeed, there be so exact a parallel between a particular case and a controlling decision of a federal court that no reasonable distinction between them can be made." (*Birkhofer* v. *Krumm*, 27 Cal. App. 2d. 513, 536-537).

A fortiori must this be true when what has hitherto been regarded as the settled law has been so regarded because of decisions of the Supreme Court of the United States itself. Having appealed to *Cæsar*, to Caesar the defendants must needs, on the constitutional question, go.

I hardly need to add that it is no part of the duty of this Court to undertake the difficult task of defending either the justice or the expediency of the alien land legislation of this State. So far as that aspect of the situation is concerned the scope of this Court's inquiry is strictly con-

fined to whether or not the legislation is obnoxious to constitutional inhibitions. The Supreme Courts, both of this State and of the United States, have expressly held that it is not. Until they shall speak again, otherwise than by some assumed implication, their determinations must be followed here. Moreover, no belief on the part of the defendants even if they entertain such belief, in the impropriety of this legislation can furnish any excuse, legal or moral, for using indirections such as those here charged to evade its effect.

[fol. 89] Each of the demurrers is overruled, and thirty days allowed the demurring defendants in which to answer.

Charles C. Haines, Judge of the Superior Court.

[fol. 90] [File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF SAN DIEGO

[Title omitted]

NOTICE OF RERULING DEMURRER—Filed March 3, 1945

To Fred Y. Oyama, Kajiro Oyama, Kohide Oyama, Ririchi Kushino, June Kushino and Yonezo Oyama, Defendants, and to A. L. Wirin, J. B. Tietz, Hugh E. Macbeth and Hugh E. Macbeth, Jr., Their Attorneys:

You will please take notice that on the 2nd day of March, 1945, the court overruled defendants' demurrer to the petition herein and gave defendants thirty days to answer said petition.

Dated: San Diego, California, March 2, 1945.

Robert W. Kenny, Attorney General; Everett W. Mattoon, Deputy Attorney General; Thomas Whelan, District Attorney of the County of San Diego, State of California. By Duane J. Carnes, Deputy District Attorney; Attorneys for Plaintiff.

[fol. 91] [File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF SAN DIEGO

[Title omitted]

AFFIDAVIT OF SERVICE OF NOTICE OVERRULING DEMURRER

STATE OF CALIFORNIA,
County of San Diego, ss:

Beatrice A. Planson being first duly sworn deposes and says:

That affiant is a citizen of the United States and a resident of the County of San Diego; that affiant is over the age of eighteen years and is not a party to the within and above entitled action;

That affiant's business address is: Room 302 Civic Center Bldg., San Diego 1, California;

That on the 2nd day of March, 1945, affiant served the within Notice Overruling Demurrer on defendants Fred Y. Oyama et al., in said action, by placing a true copy thereof in an envelope addressed to the attorneys of record for said —— —— at the office of said attorneys as fol-
[fol. 92] lows (Then quote from envelope name and address of addressee) A. L. Wirin and J. B. Tietz, Hugh E. Macbeth and Hugh E. MacBeth, Jr., 257 South Spring Street, Los Angeles 12, California, and by then sealing said envelope and depositing the same, with postage thereon fully prepaid, in the United States Post Office at San Diego, California, where is located the office of the attorneys for the party by and for whom said service was made.

That there is a regular daily communication of United States mail between the place of mailing and the place so addressed.

Beatrice A. Planson.

Subscribed and sworn to before me this 2nd day of March, 1945. Marcia Kerns, Notary Public in and for the County of San Diego, State of California. (Seal.)

My commission expires January 17, 1949.

[fol. 93] [File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF SAN DIEGO

[Title omitted]

ORDER EXTENDING TIME TO ANSWER—Filed March 31, 1945

Good cause appearing therefore and counsel for the plaintiff consenting;

It Is Ordered, that the time of the defendants for answering the complaint be and it is extended until April 30, 1945.

Dated March 31, 1945.

Charles C. Haines, Judge of the Superior Court.

[fol. 94] [File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF SAN DIEGO

[Title omitted]

ANSWER—Filed April 28, 1945

Now come the defendants, Fred Y. Oyama, Kajiro Oyama, Kohide Oyama, Ririchi Kushino, June Kishino and Yonezo Oyama, answering plantiff's Petition on File herein, deny, admit and aver as follows:

I

Defendants admit that the defendants, Kajiro Oyama, also known as K. Oyama, Kohide Oyama, formerly Kohide Kushino and Ririchi Kushino, were and each of them was and now is of the Japanese Race, natives of the Empire of Japan and citizens and subjects of the Empire of Japan, but dény that by reason thereof they are not eligible to citizenship under the laws of the United States.

II

Defendants admit that the defendant Fred Y. Oyama, also known as Fred Yoshihiro Oyama, is of the Japanese Race and was born in San Diego, California, on or about March

[fol. 95] 23, 1928; that the defendant June Kushino is of the Japanese Race and was born in San Diego, California, on March 4, 1921; that the defendant Kajiro Oyama, also known as K. Oyama, was appointed guardian of the person and estate of said Fred Yoshihiro Oyama, a minor, on March 22, 1935, and qualified as such guardian and ever since has been and now is the guardian of the person and estate of said Fred Y. Oyama; that the defendant June Kushino, also known as Junko Kushino, attained the age of 21 years on March 4, 1942; that during her minority the defendant Ririchi Kushino was the guardian of the person and estate of said June Kushino.

III

Defendants deny that on or about August 18, 1934, or at any time, defendants Kajiro Oyama, and Kohide Oyama, formerly Kohide Kushino, purchased that certain parcel of real property described as:

> All that portion of the Easterly Half of the Southwesterly Quarter of Quarter Section 164 in the Rancho da la Nacion, in the City of Chula Vista, County of San Diego, State of California, according to the Map thereof No. 166, made by Merrill, on file in the County Recorder's office, lying East of the Westerly 140 feet of even width thereof, and North of the Southerly 670.15 feet of even width thereof, Excepting therefrom the South-
> [fol. 96] erly 2 acres thereof. Also Excepting the Northerly 40 feet of said property deeded to the City of Chula Vista for street purposes.

Defendants further deny that the conveyance, on or about said 18th day of August, 1934, of said real property to defendant Fred Y. Oyama by Yonezo Oyama was a "purported" grant deed or anything else than a bona fide transaction and conveyance.

Defendants aver that Kajiro Oyama, the father, furnished the funds and/or credits to purchase the said property as a gift for his child, Fred Y. Oyama, and that said entire transaction was a bona fide gift and not a subterfuge and fraud upon the People of the State of California, as alleged in the complaint.

IV

Defendants admit that the real property hereinbefore described is and at all times herein-mentioned has been

agricultural land, and at all times herein-mentioned has been used for agricultural purposes.

V

Defendants deny that the defendants Kajiro Oyama and Kohide Oyama have occupied and do now use and cultivate said lands as their own, or at any time have had in their own right the beneficial use and enjoyment of said land for agricultural purposes, and the beneficial use of the crops grown thereon.

[fol. 97] VI

For their answer to the second cause of action to the complaint, defendants refer to each and all of the above denials, admissions, and averments and adopt and re-allege each and all of the allegations contained in paragraphs I, II, III, IV, V.

VII

Defendants answering herein deny that any of the acts complained of in the second cause of action and set forth in paragraphs II, III, IV, V, of said second cause of action, were done by defendants Kapiro Oyama and Kohide Oyama wilfully, knowingly and with intent to violate the alien land law of the State of California or with intent to evade or avoid escheat, as provided therein, but defendants aver that all of said acts recited in said paragraphs were done in good faith and for the purpose of acquiring for their son, Fred Y. Oyama, as a gift, a means of earning a livelihood and for the further purpose of guarding and husbanding said gift for said purpose. For an affirmative defense the defendants allege that the plaintiff should not recover because of laches.

Wherefre defendants p-ay judgment against plaintiffs dismissing said Petition to Declare an Escheat together with Costs and disbursements of said action.

A. L. Wirin and J. B. Tietz, Attorneys for Defendants, By J. B. Tietz.

[fol. 98] *Duly sworn to by J. B. Tietz. Jurat omitted in printing.*

[fol. 99] AFFIDAVIT OF SERVICE OF ANSWER

(C. C. P. 1013a)

STATE OF CALIFORNIA,
County of Los Angeles, ss:

Miriam Lischner, being first duly sworn, says: That affiant is a citizen of the United States and a resident of the County of Los Angeles; that affiant is over the age of eighteen years and is not a party to the within and above entitled cause; that affiant's business address is 257 So. Spring residence St., Los Angeles 12, Calif. That on the 25th day of April, 1945, affiant served the within Answer on the Attorney for plaintiff in said action by placing a true copy thereof in an envelope addressed to the attorney of record for said Plaintiff, at the business address of said attorney, as follows: residence Duane J. Carnes, Deputy, Office of District Attorney, 302 Civic Center, San Diego, Calif., and by then sealing said envelope and depositing the same, with postage thereon fully prepaid, in the United States Postoffice at Los Angeles, California, where is located the office of the attorney for the person by and for whom said service was made.

That there is delivery service by United States mail at the place so addressed or there is a regular communication and by mail between the place of mailing and the place so addressed.

Miriam Lischner.

Subscribed and sworn to before me this 25th day of April, 1945. J. B. Tietz, Notary Public in and for the County of Los Angeles, State of California. (Seal.)

[fol. 100] [File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF SAN DIEGO

[Title omitted]

AMENDMENT TO COMPLAINT—Filed August 24, 1945

Upon filing the complaint, plaintiff being ignorant of the true name of a defendant, having designated him in the complaint by the fictitious name, Doe One, and having discovered the true name to be Axel Mares, hereby amends his complaint by inserting such true name in the place of such fictitious name wherever it appears in said complaint.

Robert W. Kenny, Attorney General of the State of California. Everett W. Mattoon, Deputy Attorney General. Thomas Whelan, District Attorney of the County of San Diego, State of California, By Duane J. Carnes, Deputy District Attorney, Attorneys for Plaintiff.

[fol. 101] Proper cause appearing, plaintiff is hereby allowed to file the above amendment to the complaint.

Dated August 24, 1945.

Joe L. Shell, Persiding Judge.

[fols. 102-103] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF SAN DIEGO

[Title omitted]

DISCLAIMER OF AXEL MARCS

Comes now the defendant Axel Marcs, sued herein as Doe One, and answers the petition on file herein, as follows:

Said defendant disclaims all right, title or interest of whatsoever character or extent, in or to any or all of the premises described in the plaintiff's petition on file herein.

Axel Marcs.

[fol. 104] [File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF SAN DIEGO

[Title omitted]

FINDINGS OF FACT AND CONCLUSIONS OF LAW—Filed September 4, 1945

This cause came on regularly for trial on the 21st day of August, 1945, before the court sitting without a jury, a jury trial having been duly waived by the parties, Robert W. Kenny, Attorney General of the State of California, by Everett W. Mattoon, Deputy Attorney General, Thomas Whelan, District Attorney of San Diego County, by Duane J. Carnes, Deputy District Attorney, appearing as attorneys for plaintiff and petitioner; and A. L. Wirin, Esq. appearing as attorney for the defendants, Fred Y. Oyama, Kajiro Oyama individually and as guardian of the person and estate of Fred Yoshihiro Oyama, a minor, Kohide Oyama, formerly Kohide Kushino, Ririchi Kushino, June Kushino, [fol. 105] and Yonezo Oyama; and, it appearing to the satisfaction of the court that the defendants George Schertzer, John Kurfurst and Lawrence W. Junker as the administrator of the estate of John Mares, deceased, were duly and personally served with the Petition and Order to Show Cause herein, and it further appearing that no appearance has been made by said defendants and no answer received herein, and the default of said defendants having been duly entered, and it further appearing that defendant Axel Mares, sued herein as Doe One, has disclaimed all right, title or interest in or to the real property hereinbelow described, and the court having heard the evidence and examined the proofs, and the cause having been duly submitted to the court for its decision, the court finds the facts as follows, to wit:

FIRST CAUSE OF ACTION

(1) That all of the allegations of the Petition to declare an escheat to the State of California are true;

(2) That the defendants Kajiro Oyama, Kohide Oyama and Ririchi Kushino are and each of them is of the Japanese race, natives of the Empire of Japan and citizens and

subjects of the Empire of Japan, and by reason thereof not eligible to citizenship under the laws of the United States;

(3) That the defendant Fred Yoshihiro Oyama, also known as Fred Y. Oyama, is of the Japanese race, and was born in San Diego, California, on or about March 23, 1928, and is a citizen of the United States of America; that the [fol. 106] defendant June Kushino is of the Japanese race, and was born in San Diego, California, on or about March 4, 1921, and is a citizen of the United States of America; that the defendant Kajiro Oyama was, on March 22, 1935, in the Superior Court of the State of California in and for the County of San Diego, appointed guardian of the person and estate of the defendant Fred Yoshihiro Oyama, a minor, and qualified as such guardian, and ever since had been and now is guardian of the person and estate of said minor; that the defendants Kajiro Oyama and Kohide Oyama are the father and mother of the defendant Fred Yoshihiro Oyama, also known as Fred Y. Oyama.

(4) That there is no treaty now existing between the Government of the United States of America and the government of the Empire of Japan, by which citizens or subjects of the Empire of Japan, or natives of Japan are permitted to acquire, possess, enjoy, use, cultivate, occupy, transfer, own or inherit lands for agricultural purposes in the State of California, or to have in whole or in part the beneficial use of agricultural land in the State of California or elsewhere in the United States, nor was there on December 9, 1920, nor has there ever been any such treaty at any of the times mentioned in this complaint;

(5) That on or about the 18th day of August, 1934, defendants Kajiro Oyama and Kohide Oyama purchased that certain parcel of real property described as:

> [fol. 107] All that portion of the Easterly Half of the Southwesterly Quarter of Quarter Section 164 in the Rancho de la Nacion, in the City of Chula Vista, County of San Diego, State of California, according to the Map thereof No. 166, made by Morrill, on file in the County Recorder's office, lying East of the Westerly 140 feet of even width thereof, and North of the Southerly 670.15 feet of even width thereof, Excepting therefrom the Southerly 2 acres thereof. Also Excepting the North-

erly 40 feet of said property deeded to the City of Chula Vista for street purposes.

That on or about said 18th day of August, 1934, said real property was purported to be conveyed to defendant Fred Y. Oyama by Yonezo Oyama by a purported grant deed wherein the said Yonezo Oyama was named grantor and Fred Y. Oyama was named grantee; that on the 1st day of March, 1935, said purported grant deed was recorded at Book 380, Page 275 of Official Records in the office of the County Recorder of San Diego County; that the purchase price for said purported conveyance was the sum of Four Thousand Dollars ($4,000.00), which was paid by the defendants Kajiro Oyama and Kohide Oyama to Yonezo Oyama;

That it is not true that Kajiro Oyama furnished said purchase price as a gift for his child said Fred Y. Oyama; [fol. 108] that it is not true that said transaction was a gift from Kajiro Oyama to said Fred Y. Oyama;

(6) That said real property is and at all times herein mentioned has been agricultural land, and at all times herein mentioned has been used for agricultural purposes;

(7) That upon the execution and delivery of the purported deed of said lands on or about August 18, 1934, the defendants Kajiro Oyama and Kohide Oyama entered into the possession of said real property, and thereafter did occupy, use, enjoy, and cultivate said lands as their own and ever since said date have had in their own right the beneficial use and enjoyment of said lands for agricultural purposes, and the beneficial use of the crops grown thereon, and the beneficial use of the rents paid therefor;

(8) That said purchase of said property and the purported deed taken in the name of Fred Y. Oyama is a mere subterfuge and cover for the transaction of the said defendants, and is a fraud upon the People of the State of California, and that by reason of the premises the said State of California; the plaintiff herein, is entitled to have said property declared escheated to the said State of California;

(9) That the defendant Kajiro Oyama, also known as K. Oyama, at no time accounted to the said Superior Court for his receipts and expenditures as guardian of the person and estate of defendant Fred Y. Oyama, also known as

[fol. 109] Fred Yoshihiro Oyama, a minor; that said defendant Kajiro Oyama has at no time since said 18th day of August, 1934, filed any annual or other account or report with the Secretary of State of California as required by the provisions of section 5 of the Alien Land Law of California; that said defendant has at no time filed in the office of the County Clerk of San Diego County any report or account; that said defendant has at no time served a copy of any account or report on the District Attorney of San Diego County;

(10) That all of said acts hereinbefore set forth were done by said defendants Kajiro Oyama and Kohide Oyama wilfully, knowingly and with the intent to violate the Alien Land Law of the State of California, and with the intent to prevent, evade and avoid escheat as provided therein and by means whereof said Kajiro Oyama and Kohide Oyama did unlawfully and in violation of said Alien Land Law of California obtain the possession, use, occupancy, ownership and enjoyment of said agricultural lands hereinbefore described, and ever since said date of August 18, 1934, have had, owned, possessed, used and enjoyed, cultivated and occupied said lands, and do now have, own, possess, use, cultivate, occupy and enjoy said lands for agricultural purposes.

(11) That the defendants Yonezo Oyama, George Schertzer, John Kurfurst, Ririchi Kushino and June Kushino have no right, title, interest or claim in or to said real property;

[fol. 110] SECOND CAUSE OF ACTION

(1) That all of the allegations of plaintiff's and petitioner's Second Cause of Action are true;

(2) That it is not true that the acts recited in Plaintiff's and Petitioner's Second Cause of Action were done in good faith, or for the purpose of acquiring for the plaintiff Fred Yoshihiro Oyama as a gift as a means of earning a livelihood;

(3) That none of the allegations of Paragraph 7 of defendants' Answer are true;

(4) That the defendants Ririchi Kushino, June Kushino, Yonezo Oyama, Lawrence W. Junker as administrator of the Estate of John Marcs, deceased, Axel Marcs, sued herein as

Doe One, George Schertzer and John Kurfurst have no right, title, interest or claim in or to said real property;

(5) That on or about the 17th day of December, 1937, defendants Kajiro Oyama and Kohide Oyama purchaser that certain parcel of real property described as:

> The Southerly 2 acres of that portion of the Easterly Half of the Southwesterly Quarter of Quarter Section 164 in the Rancho de la Nacion, in the City of Chula Vista, County of San Diego, State of California, according to the Map thereof No. 166 made by Morrill, on file in the County Recorder's office, lying East of the Westerly 140 feet, of even width thereof, and North of [fol. 111] the Southerly 670.15 feet, of even width thereof.

That the purchase price for said property was the sum of Fifteen Hundred Dollars ($1500.00), which was paid by said defendants Kajiro Oyama and Kohide Oyama to the defendants Ririchi Kushino and June Kushino;

(6) That on or about the 17th day of December, 1937, the defendants Kajiro Oyama and Kohide Oyama entered into the possession of said real property, and thereafter did occupy, use, enjoy and cultivate said lands as their own and ever since have had in their own right the beneficial use and enjoyment of said lands for agricultural purposes, and the beneficial use of the crops grown thereon, and the beneficial use of the rents paid therefor; that said purchase of said property and the proceedings taken in the matter of the guardianship of the person and estate of June Kushino, a minor, is a mere subterfuge and cover for the transaction of the said defendants, and is a fraud upon the People of the State of California.

(7) That all of said acts hereinbefore set forth were done by said defendants Kajiro Oyama and Kohide Oyama wilfully, knowingly and with the intent to violate the Alien Land Law of the State of California, and with the intent to prevent, evade and avoid escheat as provided therein and by means whereof said Kajiro Oyama and Kohide Oyama did unlawfully and in violation of said Alien Land [fol. 112] Law of California obtain the possession, use, occupancy, ownership and enjoyment of said agricultural lands hereinbefore described and ever since said date of

December 17, 1937, have had, owned, possessed, used and enjoyed, cultivated and occupied said lands, and do now have, own, possess, use, cultivate, occupy and enjoy said lands for agricultural purposes.

(8) That it is not true that the bringing of this action, as to either the first or second cause of action, is barred by laches.

Conclusions of Law

As a conclusion of law from the foregoing facts the court finds that the plaintiff and petitioner is entitled to a judgment declaring:

I

That as of the 18th day of August, 1934, and as of the date of commencement of this action, title to the parcel of land situate in the County of San Diego, State of California, described as:

> All that portion of the Easterly Half of the Southwesterly Quarter of Quarter Section 164 in the Rancho de la Nacion, in the City of Chula Vista, County of San Diego, State of California, according to the Map thereof No. 166, made by Morrill, on file in the County Recorder's office, lying East of the Westerly 140 feet [fol. 113] of even width thereof, and North of the Southerly 670.15 feet of even width thereof, Excepting therefrom the Southerly 2 acres thereof. Also Excepting the northerly 40 feet of said property deeded to the City of Chula Vista for street purposes.

was and now is vested in the State of California as the owner in fee simple absolute; and did escheat to and become and remain the property of the State of California;

II

That as of December 17, 1937, and as of the date of the commencement of this action, title to the parcel of land situate in the County of San Diego, State of California, described as:

> The Southerly 2 acres of that portion of the Easterly Half of the Southwesterly Quarter of Quarter Section 164 in the Rancho de la Nacion, in the City of Chula

Vista, County of San Diego, State of California, according to the Map thereof No. 166 made by Morrill, on file in the County Recorder's office, lying East of the Westerly 140 feet, of even width thereof, and North of the Southerly 670.15 feet, of even width thereof,

was and now is vested in the State of California as the owner in fee simple absolute; and did escheat to and become and remain the property of the State of California;

[fol. 114] III

That the defendants Fred Y. Oyama, also known as Fred Yoshihiro Oyama, a minor; Kajiro Oyama, also known as K. Oyama, individually and as guardian of the person and estate of Fred Yoshihiro Oyama, a minor; Kohide Oyama, formerly Kohide Kushino; Ririchi Kushino; June Kushino, also known as Junko Kushino; Yonezo Oyama; Lawrence W. Junker, as administrator of the Estate of John Mares, deceased; George Schertzer; John Kurfurst; Axel Mares, sued herein as Doe One; have not, nor has either of them any right, title, or interest in or to said property herein described, or any part thereof, as against the State of California, and they are hereby perpetually enjoined and restrained from setting up or making any claim to or upon the real property above described, or any part thereof.

Dated: Sept. 4, 1945.

Joe L. Shell, Judge of the Superior Court.

[fol. 115] [File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF SAN DIEGO

No. 121200

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,

vs.

FRED Y. OYAMA, also known as FRED YOSHIHIRO OYAMA, a minor; Kajiro Oyama, also known as K. Oyama, individually and as guardian of the person and estate of Fred Yoshihiro Oyama, a minor; Kohide Oyama, formerly Kohide Kushino; Ririchi Kushino; June Kushino, also known as Junko Kushino; Yonezo Oyama; Lawrence W. Junker; as administrator of the Estate of John Mares, deceased; George Schertzer; John Kurfurst; Doe One; Doe Two and Doe Three, Defendants

JUDGMENT—September 17, 1945

This cause came on regularly for trial on the 21st day of August, 1945, before the court sitting without a jury, a jury trial having been duly waived by the parties, Robert W. Kenny, Attorney General of the State of California, by Everett W. Mattoon, Deputy Attorney General, Thomas Whelan, District Attorney of San Diego County, by Duane J. Carnes, Deputy District Attorney, appearing as attorneys for plaintiff and petitioner; and A. L. Wirin, Esq. appearing as attorney for the defendants, Fred Y. Oyama, Kajiro Oyama individually and as guardian of the person and estate of Fred Yoshihiro Oyama, a minor, Kohide Oyama, formerly Kohide Kushino, Ririchi Kushino, [fol. 116] June Kushino, and Yonezo Oyama; and, it appearing to the satisfaction of the court that the defendants George Schertzer, John Kurfurst and Lawrence W. Junker as the administrator of the estate of John Mares, deceased, were duly and personally served with the Petition and Order to Show Cause herein, and it further appearing that no appearance has been made by said defendants and no answer received herein, and the default of said defendants having

been duly entered, and it further appearing that defendant Axel Mares, sued herein as Doe One, has disclaimed all right, title or interest in or to the real property hereinbelow described, and the court having heard the evidence and having examined the proofs, and the court being fully advised in the premises, and having filed herein its Findings of Fact and Conclusions of Law, and having directed that judgment be entered in accordance therewith, Now, Therefore, by reason of the law and the findings aforesaid, It Is Hereby Ordered, Adjudged and Decreed:

I

That as of the 18th day of August, 1934, and as of the date of commencement of this action, title to the parcel of land situate in the County of San Diego, State of California, described as:

> All that portion of the Easterly Half of the Southwesterly Quarter of Quarter Section 164 in the Rancho de la Nacion, in the City of Chula Vista, County of San Diego, State of California, according to the Map [fol. 117] thereof No. 166, made by Morrill, on file in the County Recorder's office, lying East of the Westerly 140 feet of even width thereof, and North of the Southerly 670.15 feet of even width thereof, Excepting therefrom the Southerly 2 acres thereof. Also Excepting the Northerly 40 feet of said property deeded to the City of Chula Vista for street purposes,

was and now is vested in the State of California as the owner in fee simple absolute; and did escheat to and become and remain the property of the State of California;

II

That as of December 17, 1937, and as of the date of the commencement of this action, title to the parcel of land situate in the County of San Diego, State of California, described as:

> The Southerly 2 acres of that portion of the Easterly Half of the Southwesterly Quarter of Quarter Section 164 in the Rancho de la Nacion, in the City of Chula Vista, County of San Diego, State of California, accord-

ing to the Map thereof, No. 166 made by Morrill, on file in the County Recorder's office, lying East of the Westerly 140 feet, of even width thereof, and North of the [fol. 118] Southerly 670.15 feet, of even width thereof,

was and now is vested in the State of California as the owner in fee simple absolute; and did escheat to and become and remain the property of the State of California;

III

That the defendants Fred Y. Oyama, also known as Fred Yoshihiro Oyama, a minor; Kajiro Oyama, also known as K. Oyama, individually and as guardian of the person and estate of Fred Yoshihiro Oyama, a minor; Kohide Oyama, formerly Kohide Kushino; Ririchi Kushino, June Kushino, also known as Junko Kushino; Yonezo Oyama; Lawrence W. Junker, as administrator of the Estate of John Marcs, deceased; George Schertzer; John Kurfurst; Axel Marcs, sued herein as Doe One; have not, nor has either of them any right, title, or interest in or to said property herein described, or any part thereof, as against the State of California, and they are hereby perpetually enjoined and restrained from setting up or making any claim to or upon the real property above described, or any part thereof.

Dated Sep. 17, 1945.

Joe L. Shell, Judge of the Superior Court.

[fol. 119] Clerk's Certificate to foregoing Judgment Roll omitted in printing.

[fol. 120] [File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF SAN DIEGO

[Title omitted]

NOTICE OF ENTRY OF JUDGMENT—Filed September 22, 1945

To the Defendants Fred Y. Oyama, Kajiro Oyama, Kohide Oyama, Yonezo Oyama, Ririchi Kushino and June Kushino, and to A. L. Wirin and J. B. Tietz, Their Attorneys:

Notice is hereby given that the judgment heretofore rendered in favor of the Plaintiff and against the defendants was entered on September 17, 1945, in Judgment Book 128 at Page 895.

Dated this 21st day of September, 1945.

Robert W. Kenny, Attorney General. Everett W. Mattoon, Deputy Attorney General. Thomas Whelan, District Attorney in and for the County of San Diego, State of California, By Duane J. Carnes, Deputy District Attorney, Attorneys for Plaintiff.

[fol. 121] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF SAN DIEGO

[Title omitted]

AFFIDAVIT OF SERVICE OF NOTICE OF ENTRY OF JUDGMENT

STATE OF CALIFORNIA,
County of San Diego, ss.:

Beatrice A. Planson being first duly sworn deposes and says: That affiant is a citizen of the United States and a resident of the County of San Diego; that affiant is over the age of eighteen years and is not a party to the within and above entitled action;

That affiant's business address is: Room 302 Civic Center Bldg., San Diego 1, California;

That on the 21st day of September 1945, affiant served the within Notice of Entry of Judgment on the defendants in said action, by placing a true copy thereof in an envelope

addressed to the attorneys of record for said defendants at the office of said attorneys as follows (Then quote from envelope name and address of addressee) A. L. Wirin and J. B. Tietz, 257 South Spring Street, Los Angeles 12, California, and by then sealing said envelope and depositing [fol.122] the same, with postage thereon fully prepaid, in the United States Post Office at San Diego, California, where is located the office of the attorneys for the party by and for whom said service was made.

That there is a regular daily communication of United States mail between the place of mailing and the place so addressed.

Beatrice A. Planson.

Subscribed and sworn to before me this 21st day of September, 1945. J. B. McLees, County Clerk and ex officio Clerk of the Board of Supervisors, by M. Nasland, Deputy in and for the County of San Diego, State of California. (Seal.)

[fol. 123] [File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF SAN DIEGO

[Title omitted]

NOTICE OF APPEAL, NOTICE TO PREPARE REPORTER'S TRANSCRIPT, AND CLERK'S TRANSCRIPT, AND REQUEST FOR TRANSFER OF EXHIBITS—Filed September 27, 1945

To J. B. McLees, Clerk of the above-entitled court, and to the plaintiff and Robert W. Kenney, and to Duane J. Carnes, of Counsel for the Plaintiff:

Please take notice that the defendants, Fred Y. Oyama, Kajiro Oyama, Yoshihiro Oyama, Kohide Oyama, Hirichi Kushino, June Kushino and Yonezo Oyama, hereby appeal to the Supreme Court of the State of California from the judgment entered herein on September 17, 1945.

The Clerk of the Court is requested to prepare a Reporter's Transcript of the oral proceedings and a Transcript of all the records and papers on file with said Clerk (except the original exhibits); said Clerk's Transcript to include

the judgment roll and all the pleadings contained in said judgment roll, including the written opinion of the Court on demurrer (in the instant case and in People v. Federal Land [fol. 124] Bank of Berkeley, bearing #120450 of this Court); also this Notice.

The Clerk is also requested to cause all the original exhibits introduced in evidence at the trial to be transferred to the Clerk of the Supreme Court of California.

A. L. Wirin and J. B. Tietz, by A. L. Wirin, Attorneys for Defendants, Fred Y. Oyama, Kajiro Oyama, Fred Yoshihiro Oyama, Kohide Oyama, Hirich Kushino, June Kushino, Yonezo Oyama.

[fol. 125] AFFIDAVIT OF SERVICE BY MAIL

(C. C. P. 1013a)

STATE OF CALIFORNIA,
County of Los Angeles, ss.:

Miriam Lischner, being first duly sworn, says: That affiant is a citizen of the United States and resident of the County of Los Angeles; that affiant is over the age of eighteen years and is not a party to the within and above entitled cause; that affiant's business address is 257 So. Spring
resident
St., Los Angeles 12, Calif. That on the 26th day of September, 1945, affiant served the within Notice of Appeal, Notice to Prepare Reporter's Transcript and Clerk's Transcript, and Request for Transfer of Exhibits on the Plaintiff in said action by placing a true copy thereof in an envelope addressed to the attorney of record for said Plaintiff, at the business address of said attorney, as follows: "Duane
residence
J. Carnes, Deputy District Att'y, 302 Civic Center, San Diego 1, Calif., and by then sealing said envelope and depositing the same, with postage thereon fully prepaid, in the United States Postoffice at Los Angeles, California, where is located the office of the attorney for the person by and for whom said service was made.

That there is delivery service by United States mail at the place so addressed or there is a regular communication
and

by mail between the place of mailing and the place so addressed.

Miriam Lischner.

Subscribed and Sworn to before me this 26 day of September 1945. — — Tiez, Notary Public in and for the County of Los Angeles, State of California. (Seal.)

[fols. 126-127] Clerk's Certificate to foregoing transcript omitted in printing.

[fols. 128-131] IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

From San Diego County. Hon. Joe L. Shell, Judge.

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent,

vs.

FRED Y. OYAMA, also known as FRED YOSHIHIRO OYAMA, a minor; Kajiro Oyama, also known as K. Oyama, individually and as guardian of the person and estate of Fred Yoshihiro Oyama, a minor; Kohide Oyama, formerly Kohide Kushino; Ririchi Kushino; June Kushino, also known as Junko Kushino; Yonezo Oyama; Lawrence W. Junker, as administrator of the Estate of John Mares, deceased; George Schertzer; John Kurfurst; Doe One; Doe Two and Doe Three, Defendants and Appellants

Reporter's Transcript

APPEARANCES:

Robert W. Kenny, Attorney General, Library & Courts Bldg., Sacramento, California, by Everett W. Mattoon, Deputy Attorney General, 600 State Bldg., Los Angeles 12, California, Attorneys for Plaintiff and Respondent.

Thomas Whelan, District Attorney, Court House, San Diego, California, by Duane J. Carnes, Deputy District Attorney, 302 Civic Center Bldg., San Diego, California; A. L. Wirin and J. B. Tietz, by A. L. Wirin, 257 South Spring Street, Los Angeles 12, California, Attorneys for Defendants and Appellants.

[fol. 132] San Diego, California, Tuesday, August 21, 1945; 2:00 P. M.

COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Wirin: May I, perhaps, address the Court on a preliminary matter in connection with the case?

The Court: Yes.

Mr. Wirin: I might be a little misadventurous in this case—at least the defendants are not ready to proceed, and Judge Heald was so advised this morning. Certain of the witnesses—in fact key witnesses—and the defendants have not been in the State of California since the evacuation. At least one of them is on his way now, and being an alien it was necessary to secure a permit to travel and that was not available to him until yesterday. He has that permit and is on his way from Salt Lake City to Los Angeles where he will reach my office and then will be directed to come to San Diego. We anticipate that he will arrive this evening or not later than tomorrow morning, so we are not ready to proceed until I have had an opportunity to confer with my client and to get ready for trial, which will be tomorrow morning.

Also, there is this additional event. When the matter was called before Judge Heald this morning witnesses for the plaintiff were excused until tomorrow morning so I think neither side has a witness to proceed.

The Court: Well, I assumed, when the matter was transferred here, that we could at least get a start on it. I [fol. 133] don't understand the excusing of available witnesses until tomorrow.

Mr. Wirin: I represent the defendants.

The Court: They were released by Judge Heald?

Mr. Wirin: Upon request of the plaintiff. I think the thought at that time was that there wouldn't be a trial department open. Mr. Carnes can better account for that as I had nothing to do with that. I am taking care of the defendants' case.

Mr. Carnes: That was our information from the clerk that no one else, no other department would possibly be open until 10:00 o'clock tomorrow morning.

The Court: Is there any documentary showing to be made?

Mr. Carnes: We can bring in the County Clerk and some files.

The Court: Well, how much time would it save us to go ahead with what you have available?

Mr. Carnes: Well, I don't suppose we would spend more than 15 minutes or so.

The Court: There is one witness here.

Mr. Wirin: In that connection there is this other matter I would like to call to the Court's attention. While it may be that the plaintiff has some witnesses ready it would be a very great inconvenience to me and I would very much prefer if evidence were not adduced until my clients were here so that I would be in a position to cross examine [fol. 134] more intelligently and more thoroughly than I would be without his being here. As I said, as a matter of fact, he has not been in the State of California for some years—since the evacuation—and I want an opportunity to confer with him in preparation of the case.

There is another feature of the case which may require time on the part of the Court and perhaps also of counsel. There are some law questions in the case which will come up upon the beginning of the case when the plaintiff offers testimony, and in the course of the case, law questions which are reflected by a brief which we have filed and by an opinion which Judge Haines has filed and I didn't want to launch into a discussion of those problems. Also it may be that the Court may find it worth while to read the memorandum and Judge Haines' opinion as a kind of background, if it desires. Then we might spend some time in oral argument.

The Court: Well, I never have been in the habit of developing a background before I try a case. It seems to me that when these legal questions arise that we can meet them as we come to them. If we don't get started with the trial we will never get to the legal problems. Now, being entirely ignorant of the situation, you may be right. I think we ought to go ahead with what evidence we have and conserve our time. We have a backlog of many, many cases set for trial in this court. It seems to me we ought to use [fol. 135] all the time we have available to expedite the matter.

Mr. Wirin: I don't want to be in the position of delaying the Court. If the Court feels or desires that it ought to proceed with the witnesses available, all right.

The Court: I think so, don't you? Now, as a matter of fact, I think that if we can get rid of one witness and some

of the documentary proof that we had better do it. It might just turn out that it would result in a convenience to you toward the end of the case.

Mr. Wirin: May I answer the Court's question? The Court asked what I really thought and I would like to answer the Court's inquiry.

It happens that there are questions of law which will arise in the case immediately upon the production of a witness on behalf of the plaintiff. At that time we intend to object to the introduction of any evidence on the ground that the complaint does not state a cause of action.

Now, it happens, also, that the grounds to be urged by the defendants at that time—and that would be in a couple of moments if a witness were called—are the grounds which have been set forth in a demurrer, the grounds which have been argued in the memorandum and grounds which have been passed upon, in part, at least, by Judge Haines, so it may be that it is idle to try to anticipate matters in the course of a trial. However, from my knowledge of this case I do expect those questions will be in the case and if your [fol. 136] Honor prefers to go ahead with the case in the orderly manner and to meet the law problems as they arise, we will do it.

The Court: These problems have been passed on by Judge Haines?

Mr. Wirin: They have been passed upon in part by Judge Haines.

The Court: If they have been passed on by Judge Haines in the presentation of a demurrer, unless he reserved to you the right to again present them in the trial court, I think these matters are settled. Am I incorrect about that?

Mr. Wirin: I don't want to say you are incorrect. I don't agree. The reason I don't agree is as follows: I think, despite the ruling of the Judge on motion or demurrers, whether or not a complaint states a cause of action is a question which can be raised before the trial court on the trial. It is a question which the trial judge, in trying the case, must determine on his own and may not merely rely upon a ruling made on demurrers in a preliminary proceeding of the case. I may be mistaken about that but I have always so thought. In other words, the question as to whether or not the complaint states a cause of action is a question which can always be raised—not always, but which can seasonably be raised, at least, before any

evidence is introduced in support of the complaint. I have that opinion and it is my view that the trial court is confronted with the problem and duty of determining the ob-[fol. 137.] jections to the introduction of evidence on its merits, that is to say, to determine then, *de novo* and for himself, as a trial judge, whether the complaint does state a cause of action. The mere fact that a judge in another department of the court, a judge of the court, had expressed views upon a demurrer does not foreclose the trial judge in considering questions raised in connection with an objection to the introduction of evidence that the complaint does not state a cause of action.

I appreciate your Honor's reaction. It is a common reaction. It is a reaction which I think I would have at first blush in the matter.

This matter also, if I may say so, is one of considerable consequence, not only because every lawyer thinks his case is of consequence, but it is a question which these defendants hope to get a ruling on, not only from this court but from the higher court. It is a question which, either in this case or some appropriate case, will call for a decision by the higher courts. Indeed one of these cases has been submitted to the Supreme Court.

The Court: Now, all of that is of no moment here at all. Every case we try should be tried in the best manner and with full recognition of the necessity of giving every litigant his rights and whether it is going to the Appellate Court or any other court makes no difference at all. I think we should try the case as best we can without regard [fol. 138] for the possible destiny of the case. I am not interested in that end of it.

Mr. Wirin: I shan't mention it any more.

The Court: All right. We may then go ahead with what we have.

Mr. Carnes: I would like, first, to call Mr. McLees, the County Clerk, to bring in his files. He is al- ready to testify.

Mr. Mattoon: May it please the Court, we find it very helpful to file the existing provisions of the Alien Land Law as they are amended up to date and for that purpose we have made up a little multigraphed pamphlet. If it will be of any assistance to the Court I have an extra copy and will be glad to submit it.

Mr. Wirin: We are glad to submit any information to the Court from any source.

The Court: Gentlemen, I would appreciate a statement as to your cause or causes of action. I haven't had the opportunity of reading the pleadings.

Mr. Carnes: Very well. This is an action filed under the provisions of the Alien Property Initiative Act of 1920, sometimes called the Alien Land Law.

The gravamen of the action is the acquiring of real property by the defendant, Kajiro Oyama and his wife, Kohide Oyama, who are citizens of Japan. The record title to the property described in the first cause of action was taken [fol. 139] in the name of their minor son, Fred Oyama. There was a guardianship proceeding in which the father was appointed guardian.

The second cause of action has to do with another and smaller piece of property later acquired. The title to that piece of property is still of record in the name of John Mares, now deceased. His executor has been personally served and defaulted and claims no interest.

The answer claims that both parcels were purchased by the father, Kajiro Oyama, as a gift for the son, Fred Oyama.

The issue of fact in this case is whether the purchase by the alien father, who was himself ineligible to own or hold real estate in California, was done in good faith for the beneficial ownership of his son or whether, as the plaintiff contends, the use of the son's name was a mere subterfuge and the transaction was, in fact, for the benefit of the alien parents. That is the issue in the action.

The answer admits certain allegations which are sometimes difficult to prove in these cases. It expressly admits, in paragraph I of the answer, that the parents Kajiro Oyama and his wife, Kohide Oyama, and an uncle Ririchi Kushino were and each of them was and now is of the Japanese race, natives of the Empire of Japan and citizens and subjects of the Empire of Japan. That is expressly admitted in the answer.

Then it admits that the son, Fred Oyama, Fred Yoshihiro [fol. 140] Oyama is of the Japanese race and was born in San Diego, California, on or about March 23, 1928. We don't dispute the fact of his American birth or citizenship.

Then they allege further—they do not deny that the purchase price was advanced by the alien father, as a gift to the son, and the agricultural character of this land is admitted.

A few moments ago Mr. Wirin agreed that two minor corrections may be made to the pleading by interlineation. In the defendants' answer at page 2, Paragraph III, line 12——

The Court: Page 2?

Mr. Carnes: Page 2 of the answer, your Honor. After the words "Kahiro Oyama" insert the words "and Kohide Oyama".

The other correction is on page 2 of the Plaintiff's petition paragraph III, line 21, after the words "United States" add "nor was there on December 9, 1920".

Mr. Mattoon: That being the date the Alien Land Law took effect.

The Court: Give me the wording again.

Mr. Carnes: "Nor was there on December 9, 1920."

The Court: Apparently some language has been stricken.

Mr. Carnes: No, your Honor.

The Court: That is followed by the language "nor has there ever been any such treaty——"

Mr. Carnes: Yes.

The Court: All right.

[fol. 141] Mr. Wirin: Will the Court permit me to make a short statement about the defendants' position?

The Court: If they have completed.

Mr. Wirin: I thought they had.

The Court: These corrections—you agree to this application?

Mr. Wirin: We stipulated to it.

Mr. Mattoon: Might I supplement what Mr. Carnes has said, just briefly, your Honor?

The Court: Yes.

Mr. Mattoon: This is purely introductory. The Court's attention was called to the fact that the grantee in the purported deed was a minor of American birth and hence an American citizen, and at that time eight years of age; that a petition for a guardianship was filed with the court in the regular fashion and a guardian was appointed. That should be supplemented by the statement that never has there been a report filed, as required by the Alien Land Law, showing the various facts enumerated in Section 5 of the Alien Land Law which requires—that is on page 4 of the pamphlet—which requires an annual report to be filed in the office of the County Clerk setting forth a description of the real property, the date it was acquired, an itemized

account of the expenditures, investments, rents, issues and profits in respect to the administration and so forth.

I believe that should have been mentioned in addition [fol. 142] to the fact that the guardianship was granted.

The other point, if the Court will turn to page 10, upon which is Section 9 of the Alien Land Law—this is shown as amended in 1945, but in the particular I mention it is identical to the amendment of 1923—it is found that upon proof that the title to the land was acquired by one person and the consideration therefore for the acquisition was paid by another ineligible to become a citizen, there is a *prima facie* presumption arising that the conveyance was made with the intent to evade and to violate or void the provisions of the Alien Land Law. That presumption arises in line 14—"On taking up property in the name of a person other than the persons mentioned in Section 2 thereof—" In other words, taken in the name of a citizen—"and consideration paid by the ineligible alien gives rise to this presumption."

Mr. Carnes mentioned the fact that in the answer of the defendants, on page 2, line 25, it is openly admitted that the father furnished the funds and credit to purchase the property, but he did it as a gift to a child. Now, the presumption arises, by the admission of this fact—the burden being upon them to demonstrate that it was a *bona fide* transaction and that it actually took place.

The Court: All right.

Mr. Wirin: So far as the defendants are concerned, Mr. Carnes has made quite a fair statement of the issues and [fol. 143] I have no particular quarrel with Mr. Mattoon's statement. I suppose I should perhaps state it a little bit differently as every partisan states his case a little more favorable than one objecting would state it.

So far as we are concerned we claim, and we admit, that the central factual issue is the intent of the father. We claim that the law is, and I think there is no dispute about that as there happened to be two decisions which are decisions squarely on the point—that despite the fact that an alien of Japanese decent may not own real estate, real property, he, none the less, if he acts in good faith, may make a gift to anyone, particularly his minor child or children, and if the transaction is in good faith then there has been no violation of the Alien Land Law.

Would your Honor care to have the references to those two cases at this time?

The Court: No, I think not. What I want now is a general statement.

Mr. Wirin: It is true that in this case the father applied for guardianship proceedings and in those proceedings he was duly appointed the guardian and certain transactions were conducted by him, we claim as guardian for the benefit of the son and they were presented to the Court and it was approved by the Court. We say that so far as the law is concerned no guardianship need be taken, and it is purely a matter which may be taken by the alien, if he de- [fol. 144] sires it. The central question is the question of the good or bad faith. In other words, if an alien of Japanese descent in good faith wants to make a gift of the property to his son he may do so without applying for guardianship proceedings, as submitted under the Alien Land Law. However, he may apply for guardianship proceedings if he wants to. We claim that the obligation was made and that certain matters, certain steps were taken which were approved by the Court and they constitute some evidence of the good faith of the father so far as his relationship with the son is concerned.

Now, we think the law is that the fact that the father continued to manage the property, continued to be in possession in a sense of managing it providing the management is for the benefit of the son, does not, certainly of itself, constitute evidence of fraud or evidence of the lack of good faith, and decisions, at least one decision of the Supreme Court, seems to be to that effect.

We say that the law is that not only possession by the father and management but, for instance, where checks are written by the father—in one of the cases checks were written by the father—the trial court found that the transaction was in good faith and the Supreme Court upheld their judgment.

There probably will be some evidence in this case, unquestionably on the part of the plaintiff, and also on the part of the defendants, of the management of the property and [fol. 145] custody or control of the property by the father, but, as we shall claim, wholly and entirely subordinate to the rights of the son. We also think that the law is that a guardianship may be taken for a minor even though the guardian is an ineligible alien and even though the one

who is the beneficiary of the guardianship estate is a son of the ineligible alien. We think the law is—I hope I am not anticipating law questions—that the taking of the property in the name of a minor, in good faith, vests title in and to the property in the name of the minor.

Of course, in this case there is the additional fact that the vesting of title, as we shall undertake, was approved by this court, by a judge of this court, because the transfers of the property were reflected in the guardianship proceedings and had the approval of the court.

By way of finality, we think the central situation is the good or bad faith of the transaction. We concede that under the statute there is a presumption and we admit that the burden is upon us to overcome the presumption and we hope to be able to overcome that presumption.

The Court: Very well.

Mr. Carnes: Mr. Kurfurst, will you take the stand.

[fol. 146] JOHN C. KURFURST, called on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct examination.

By Mr. Carnes:

Q. Your name is John C. Kurfurst?

A. Yes, sir.

Q. Where do you reside?

A. I reside now at Jamul.

Q. Are you acquainted with the Oyama family who owns a farm at Chula Vista, near the present site of the Rohr Aircraft factory?

Mr. Wirin: I would like to make an objection at this time. We object to the introduction of any evidence on the ground that the complaint does not state a cause of action. As an additional ground for the objection we refer to, without restating it now, our grounds set forth in the demurrer which has been on file.

The Court: Overruled, reserving to you the right to move to strike at the appropriate time.

The Witness: Well, I am. I have known him for several years.

By Mr. Carnes:

Q. What members of that family are you acquainted with?

A. Well, with his sister, Mr. and Mrs. Kushino and their [fol. 147] family. They have lived across the street from me for ten years. The children went to school with my children.

Q. Do you know Kajiro Oyama?

A. No, I never heard that name.

Q. Do you know Fred Oyama?

A. Yes. That is the only way I know Mr. Oyama, by Fred. We always called him Fred. Maybe it was because everybody else called him Fred.

Q. Will you state the approximate age of Fred Oyama?

A. Well, I should say—I think he is about my age, fifty-five. You can't tell anything about Japanese people, about their age.

Q. He could be a man who was born in 1899 and is now, therefore, forty-six years old?

A. Oh, I would take him to be older than that, maybe not. I couldn't answer that right.

Q. Did you state that his wife is a sister of Mr. Kushino?

A. That is the way we understood it in the family.

Q. Do you know a minor son of Mr. and Mrs. Oyama?

A. Just a little fellow; he was a little fellow when we knew him, about seven or eight years old. Then they moved to Capistrano, so we did not know much about them.

Q. When did you first become acquainted with the family?

A. About 1932, I believe; '31 or '32. I couldn't verify [fol. 148] that.

Q. How long have you known the Kushino family?

A. From that time.

Q. About when did the Oyama family move to—move from Chula Vista?

A. I couldn't answer that. I am not sure.

Q. Can you state approximately?

A. No, sir.

Q. Will you state, if you know, who was occupying the property in the spring of 1942 when the people of Japanese ancestry were required to leave the State of California?

Mr. Wirin: Now, we object to that as calling for a legal conclusion and problem. The question of occupation is

primarily a question of law. We have no objection to a description of what he saw.

The Court: Sustained.

By Mr. Carnes:

Q. Were you familiar with the property in the spring of 1942?

A. Yes, sir.

Q. Do you know who was living on the premises then?

A. The Kushino family.

Q. And who did that family consist of?

A. Well, I couldn't name the children; about five or six in the family. June was the oldest, that I did business [fol. 149] with. She turned the property over to me the day of the evacuation, the day they had to leave, because the fathers were going and the kids didn't have no one to turn the stuff over to; so I just agreed to help them out. That is all.

Q. How old was June Kushino at that time?

A. She must have been—I am sorry I couldn't say—she must have been about 18 years old. She is a couple of years ahead of my daughter and that is the reason I could keep track of it. I couldn't verify the age.

Q. You state that she left you in charge of the place?

A. Yes.

The Court: Here is Mr. McLees.

Mr. Wirin: We have no objection to your putting him on out of order.

Mr. Carnes: Mr. Kurfurst, kindly step down for a moment.

(Witness temporarily excused.)

Mr. Carnes: Mr. McLees.

J. B. McLees, a witness called for and on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct examination.

By Mr. Carnes:

Q. Your name is J. B. McLees?

A. Beg pardon, sir?

Q. Your name is J. B. McLees?

[fol. 150] A. Yes.

Q. And you are the County Clerk and ex-officio Clerk of the Superior Court?

A. Yes, sir.

Q. I will ask you if, among the records of the Superior Court——

Mr. Wirin: I am willing, to save time, to eliminate the preliminary questions. If you want the records offered I probably will agree to it, if it is agreeable to the Court.

The Court: Surely.

Mr. Carnes: May it be stipulated that Probate file No. 22060, in the Guardianship of Fred Yoshihiro Oyama, a minor, may be introduced in evidence?

Mr. Wirin: No objection.

Mr. Carnes: Is it further stipulated that the file, No. 24654, Guardianship of June Kushino, a minor, may be introduced in evidence?

Mr. Wirin: No objection. I only have this word: It isn't my primary concern, but the original records—copies may be furnished, perhaps, for this record by the plaintiff, the State of California.

Mr. Carnes: If it comes to an appeal I believe certified copies can be substitu-ed.

The Court: Yes.

Mr. Carnes: I believe the practice is to offer the original files in evidence. It is competent evidence.

[fol. 151] Mr. Wirin: We have no objection.

The Court: Then they may be received.

(File No. 22060 received in evidence and marked Plaintiff's Exhibit No. 1.)

(File No. 24654 received in evidence and marked Plaintiff's Exhibit No. 2.)

By Mr. Carnes:

Q. Mr. McLees, I would like to ask you further. You have in your custody certain reports which are filed, in duplicate with the Secretary of State and the County Clerk, by trustees, guardians, and agents concerning property or an interest therein, belonging to aliens mentioned in Section 2 of the Alien Property Initiative Act of 1920, and minor children of such?

A. Yes.

Q. I will now ask you whether you examined your records so ascertain whether or not there has been filed with you such a report by or concerning the defendant, Kajiro Oyama?

A. There has not.

Q. I ask the same question concerning the defendant Fred Yoshihiro Oyama?

A. There has not.

Q. And the defendant Ririchi Kushino?

A. There has not.

Q. And the defendant June Kushino?

[fol. 152] A. There has not.

Mr. Carnes: That is all, Mr. McLees.

Mr. Wirin: No questions.

The Court: Thank you, Mr. McLees.

(Witness excused.)

John C. Kurfurst, a witness previously called and sworn as a witness on behalf of the plaintiff, resumed the stand and further testified as follows:

Direct examination (Continued).

By Mr. Carnes:

Q. After you took charge of this property, Mr. Kurfurst, did you make any payments to any of the Kushinos or to the Oyamas?

A. I didn't make no payment until '43. I kept everything in together in my own bank account until Mrs. Oakley, from Los Angeles, come over from the Reclamation Center to get it straightened up.

Q. What was the first of the payments; that is, did you occupy the land yourself?

A. No.

Q. Or rent it out?

A. Rented it out.

Q. To whom did you rent it?

A. First to Mr. Darrow—I can give you the accounts [fol. 153] here—I turned it over to Mr. Darrow June 20th. He left on April 8th and I turned it over to Mr. Darrow from June 20th to August 20th to clean the place up and

paint it—that is outside and inside—and clean it up, free of rent.

Then I collected rent from August 20th to September, in cash—September 20th—and I gave Darrow $25.00 allowance for cleaning the septic tank. I couldn't get a septic tank man to clean it. It was filled up.

Then from then on Darrow left and I rented it to Jim Vine. I collected rent from Jim Vine until December 20, 1944.

Q. That was——

A. Wait a minute, I am sorry. I have got another letter here. That is just the records in here. Here it is right here. I collected $100.00 for 1945 and $420.00 for the rent of the ground to Schertzer, and I kept out $84.00 for my own work, to worry about it, and gave Fred Oyama a sixteen dollar check. Out of that $420.00 I— taken out $84.00. I have the checks here, the cancelled checks to show for it. They are somewhere here—I had so much darned grief with the property from the O.P.A. and everything. That is the last of the payments I received.

There is a check for $16.00 out of the $100.00 and my first check was $330.00 and then Mr. Schertzer, I had him make a check for the $40.00 an acre direct. The last two checks Schertzer made him direct.

[fol. 154] Q. These two payments of $330.34 dated February 10, 1944, and $16.00 dated April 8, 1944, were the payments which you transmitted?

A. Yes. And this here. I turned that over in April and Schertzer's check—I had Schertzer make a check direct to Fred Oyama. That is the receipt I got from Mr. Oakley. That is what is his—Harry Oakley, War Reclamation Authority from Los Angeles. I paid direct to him.

Q. That was——

A. This is for the house. This is for the house. Then the rent for the soil was paid out by Mr. Schertzer. It is funny you haven't got him here.

Q. He was here this morning.

A. I am sorry I made the wrong cue. We had this straightened up. That is the letter I got. Here is another letter from Chino, and here is what she gave me when she left, June Kushino.

Q. Do you know which member of the family Shigeko is?

A. No, I don't. I wrote to her afterwards and told her I would keep the money, as it was needed—a new septic

tank and a cesspool—but we didn't have to do it. We just cleaned it out.

Mr. Carnes: We offer as Plaintiff's Exhibit first in order a photostatic copy, first of a check in favor of Fred Oyama, [fol. 155] signed E. Rosemond Kurfurst, dated February 10, 1944, bearing the endorsement "Fred Oyama" on the back.

The Witness: That is my wife.

The Court: It may be received as Plaintiff's Exhibit 3.

(Photostatic copy of check received in evidence and marked Plaintiff's Exhibit No. 3.)

Mr. Carnes: We also offer in evidence as Plaintiff's Exhibit 4 a photostatic copy of a check dated April 8, 1944, signed "John C. Kurfurst" to Fred Oyama showing the endorsement "Fred Oyama" on the back.

The Court: It will be received as Plaintiff's Exhibit No. 4.

(Photostatic copy of check received in evidence and marked Plaintiff's Exhibit No. 4.)

By Mr. Carnes:

Q. I show you this. You state that this document was given to you by June Kushino?

A. Yes.

Q. At the time——

A. She were evacuating.

The Court: You are not making a very good record, Mr. Carnes. Wait until Mr. Carnes finishes his question before you answer.

The Witness: I am sorry.

[fol. 156] By Mr. Carnes:

Q. I show you a document signed "Shigeko Oyama by June Kushino," which document reads:

"I, Shigeko Oyama, do hereby give Mr. John Kurfurst the power of attorney to act as the agent over my property consisting of house and garage, china closet, one bed, bureau, sofa and easy chair, dining room table, four chairs.

"If in case the house is rented, the money should be deposited at Security Trust & Savings Bank of Chula Vista.

"Arrangements should be made with Mr. Kurfurst on the matter of money, date of payment, etc."

We offer this document in evidence as Plaintiff's Exhibit 5.

The Court: It may be received as Plaintiff's Exhibit 5.

(Document received in evidence and marked Plaintiff's Exhibit No. 5.)

By Mr. Carnes:

Q. Mr. Kurfurst, I show you a photostatic copy of a letter dated June 7, 1944, signed "Fred Oyama" addressed to you and reading:

"I wish to advise you that I am turning over the management of the property to Mr. Kelly of the Security Trust & Savings Bank and I have turned over all [fol. 157] authority to him.

"I want to thank you for all the time and effort spent on your part in managing the property."

I wish to offer the photostatic copy of the letter from Fred Oyama to John C. Kurfurst, dated June 7, 1944, as Plaintiff's Exhibit next in order.

Mr. Wirin: We have no objection.

The Court: It will be received as Plaintiff's Exhibit 6.

(Letter dated June 7, 1944 received in evidence and marked Plaintiff's Exhibit No. 6.)

Mr. Wirin: I assume it is photostated from the original which at one time you had?

Mr. Carnes: That is correct.

The Court: Received as Plaintiff's Exhibit 6.

By Mr. Carnes:

Q. Now, Mr. Kurfurst, you state that the father of the family was known to you as Fred Oyama?

A. That is the way I knew him.

Q. Did you ever hear him refer to himself by that name?

A. No, sir, I didn't.

Q. You did not?

A. He never told me his name, but that is the way we called him. That is the way I wrote the checks. He gave me a check at one time for labor but I cannot remember or [fol. 158] state the fact that he signed his name "Fred" or not, I couldn't tell you that.

Q. Did he sign it himself?

A. Well, he wrote me a check right in the field but I couldn't tell you how he signed it or nothing. But he paid me for tractor work.

Q. Were you living in that neighborhood in August, 1934?

A. Which neighborhood?

Q. In August, 1934 were you living in that neighborhood?

A. Yes.

Q. And in December, 1937 were you living in that neighborhood?

A. Yes, sir.

Q. You state that both the Oyamas and the Kushinos moved into the neighborhood about 1932?

A. Somewhere in that neighborhood.

Q. And——

A. I don't know if they lived in that same place or not, but they lived in Chula Vista. The Kushinos lived across the street from me about that time.

Q. Did the Kushinos continue—You stated the Kushinos were living on the Oyama place?

A. During the evacuation.

Q. In 1942?

[fol. 159] A. Yes.

Q. And you don't know even approximately how long they lived there?

A. No, I don't.

Q. What was the address in Chula Vista at the time?

A. I couldn't tell.

Q. What street?

A. I lived on J Street—that is when they moved out—but when they lived across the street from me they lived on F, the corner of F and National in Mrs. Mathew's place.

Q. That is the Kushinos?

A. Yes. They lived there for several years.

Q. Then they moved on to——

A. No, they moved to Castle Park after that and then to the Oyama place, but I don't know where in Castle Park.

Q. Did you handle any more money or rentals for the Oyamas or the Kushinos?

A. Not after that.

Q. Any in addition to the money which you transmitted by the two checks which are in evidence?

A. Well, I collected Schertzer's check and mailed it to him, mailed to this Mr. Oakley, but in Fred Oyama's name and had him make it direct. There was two checks from Mr. Schertzer. I am pretty sure that they were made direct.

Q. Do you know what use the Kushinos were making of [fol. 160] the property at the time they left?

A. Nothing whatever. There was lemon orange grove there they were digging out and I pulled it out. They turned it over to me for a year to pull it out. I pulled it out and then rented it to Schertzer for $240.00. It cost me over $300.00 to clean it, and I broke an ankle at that time, doing it, and I had to give it up. I was going to cultivate it myself.

Q. The lemon trees were pulled out after the evacuation?

A. After the evacuation, yes. They gave me one year's rent free for cleaning the ground up and putting it in shape.

Q. Who was it who made that arrangement with you?

A. I have a letter here from Mr. Oyama—I am pretty sure—if I can find which one it is—or else Kushino wrote to me in regard to it.

Q. Were you on the place at all when the Oyama family lived there?

A. Never.

Mr. Carnes: I believe that is all.

Mr. Wirin: May I, with the Court's indulgence, and perhaps as a special courtesy, forego cross-examination until the morning? I don't anticipate my cross-examination will be extended in any event. As I have said to your Honor—I didn't say this, as a matter of fact—my files are in my hotel room when I anticipated, from what took place [fol. 161] this morning that there would be no hearing today. Also, frankly, I am expecting Mr. Oyama in San Diego this evening and I want to talk to him and I anticipate we can proceed tomorrow morning without any delay.

The Court: The only difficulty is that it would require him to return.

Mr. Wirin: May we ask him about it? Could you come back tomorrow without a great deal of inconvenience?

The Witness: I am working 14 hours a day and I have 56 acres to take care of and I broke away to come here. I have lost too much time trying to collect the rent and everything. I wouldn't do it for nobody, not even my own brother, any more. I wouldn't.

Mr. Wirin: Perhaps we could have a short recess. Maybe he has some papers that I could look at.

The Court: Yes. We will take a short recess.

(Short recess.)

Mr. Wirin: We will proceed with the examination of the witness, if your Honor please.

The Court: All right.

Cross-examination.

By Mr. Wirin:

Q. Now, Mr. Kurfurst, have you ever talked to me before you met me here in the courtroom this afternoon?

A. No, sir.

[fol. 162] Q. Have you ever had any correspondence with me or dealings with me before?

A. No.

Q. You were subpoenaed by the other side?

A. By the Court—rather the Sheriff's office, I guess.

Q. Now, have you ever—can you hear me?

A. I am hard of hearing on my right ear.

Q. If you have difficulty in hearing me let me know. Have you ever had any conversation, before the evacuation, with the old man Oyama, the middle aged man, about the property and whose property it was? Have you had such a conversation?

A. Not personally. I heard that in the garage, May's Garage—that is P. E. May's Garage on National and University. He said "Some day the boy will have a good piece of property because that is going to be valuable." That is all I know about it because the Oyamas did a lot of business and we were next door and we were there all the time, anyway.

Q. As a result of your dealings with the old man whose property did you understand the property was?

Mr. Barnes: That is objected to as calling for an opinion and conclusion of the witness.

Mr. Wirin: It is cross-examination, your Honor.

The Court: Sustained.

[fol. 163] By Mr. Wirin:

Q. Did you ever have any conversation with the old man Oyama?

A. Never did; just dealings—in business dealings.

Q. Wait. Did you ever have any talk with him? Did he ever say anything to you as to whose property this was?

A. No. Not to me. I just overheard it in the garage.

Q. You overheard it? You hear Oyama make that statement?

A. He told May, "That piece of property is going to be very valuable", and he referred to his boy. That is all I know.

Q. Now, what was it that you heard him say about the property and the boy at the time you overheard the conversation with Mr. May?

A. I would hate to state that because we were over-hauling a truck, my boy and I in the garage, in May's garage. I couldn't tell you just what—how we overheard it—but I overheard that. That is all I know.

Q. Yes. What else, if anything, did you overhear? What if anything did you overhear the old man Oyama say as to whose property this was?

A. Well, he didn't say whose property it was. He just said, "Some day it will be valuable. The kid will have a good piece of property." That is all. When you are not interested you don't remember. You don't remember when [fol. 164] you are not interested in the thing.

Q. Now, I call your attention to a copy of a letter which came from your files and which was addressed to Mr. Oakley, Evacuee Property Supervisor at Los Angeles, re: Fred Yoshihiro Oyama and June Kushino, did you send a letter of which this is a copy, to Mr. Oakley in connection with these matters?

A. Yes.

Q. I call your attention "re: Fred Yoshihiro Oyama" and underneath it "June Kushino."

A. It is the two kids, those are supposed to be.

Q. It was pertaining to these two kids?

A. Pardon me. It was not the kids—Fred Oyama, Jr.—it was just the same as the old man. I don't know.

Q. And in any event you were referring to the two kids when you wrote this letter?

A. That is all. We were doing business with June.

Q. June was the kid?

A. Yes.

Q. And Fred Yoshihiro Oyama was the boy?

A. Yes.

Q. The young boy?

A. That was June's cousin.

Q. How old was Fred Y. Oyama at that time?

A. I haven't seen him since he was eight years old.

Q. He is a young boy now?

[fol. 165] A. I don't know anything about him.

Mr. Wirin: Now, we would like to offer this in evidence.

Mr. Carnes: No objection.

The Court: It may be received as Defendants' Exhibit A.

(Copy of Letter received in evidence and marked Defendants' Exhibit A.)

By Mr. Wirin:

Q. Now, did you receive a letter, which I now show you, which is dated February 14, 1944, from the War Relocation Authority, Evacuee Property Supervisor, a Mr. Oakley, Evacuee Property Supervisor, re: Fred Yoshihiro Oyama and June Kushino?

A. Yes.

Q. That is pertaining to the two kids, is it not?

A. Yes.

Mr. Wirin: We will offer this in evidence.

Mr. Carnes: No objection, your Honor.

The Court: It may be received as Defendants' Exhibit B.

(Copy of letter dated February 14, 1944 received in evidence and marked Defendants' Exhibit B.)

By Mr. Wirin:

Q. Did you receive this letter from June Kushino dated November 16, 1942, from Poston, Arizona, addressed to [fol. 166] you?

A. Yes.

Q. And do you recognize her handwriting? Do you recognize her writing as the writing of June Kushino?

A. I am not an authority on that.

Q. You received it?
A. It is from her, anyway. That is the way we got it.
Q. June Kushino is the young girl?
A. Yes.

Mr. Wirin: We offer this in evidence.
Mr. Carnes: No objection.
The Court: It is received as Defendants' Exhibit C.

(Letter received in evidence and marked Defendants' Exhibit C.)

By Mr. Wirin:

Q. In this letter from June Kushino—that is the young daughter—Did you notice that she asks you to pay something for certain furniture?
A. No.
Q. "If the furniture has not yet been taken, please pay it out of the rent money——"
A. That was taxes. The Tax Collector was going to come over and take it out. I didn't want to take it out until I wrote to them and he said he was coming back but he never did, so it never was paid.
[fol. 167] Q. You got this letter from June Kushino telling you what to do about it?
A. Yes.
Q. June Kushino is the young girl?
A. Yes.

Mr. Wirin: The reason for my offering this is to show that he was communicating about what she said was her property, as a personal matter and that there was nothing confidential about the situation.

By Mr. Wirin:

Q. Did you at any time hear the father say that he was managing the property for the boy?
A. No, I didn't.
Q. Did you at any time hear him say that he was guardian for the boy or that there was a guardianship proceeding?
A. No, I don't think I ever did.
Q. Did you tell me when we were having a little visit that you understood that the father was acting as guardian for the boy?

A. Well, the Japanese aliens have to have guardians or somebody has to be guardians. We know that automatically.

Q. You knew that the father was guardian for the boy?

A. Well, I wasn't sure, no. I better not say that because I am not sure of that, but I know he was running his business.

[fol. 168] Q. You knew that the father was running the boy's business?

A. Yes, sir.

Q. And you told me that during——

A. But that was when he was here.

Q. —during our little visit?

A. Whether he was guardian by the court or not, I don't know.

Q. You told me that during our visit during the court recess?

A. Yes, because we knew that.

Q. That the property was the boy's property being run for the boy by the father?

A. Yes, it belonged to him and June Kushino. She just had an acre or two in the eight acres.

Q. The property belonged to the boy and June Kushino?

A. Yes. I think it was two acres.

Q. You knew that all along in your dealings with the Oyama and Kushino families?

A. Yes. I think the two acres with the house belong to June and the other belongs to Oyama.

Q. You made out checks to Fred Oyama, didn't you?

A. Yes.

Q. And your correspondence with the War Relocation Authority was pertaining to Fred Oyama?

A. Yes.

[fol. 169] Q. And is this a letter which you received from Harry R. Oakley of the War Relocation Authority addressed to you, in re: Fred Oyama?

A. Yes.

Q. And pertaining to the two receipts, the one for $330 and the other $16.00?

A. Yes.

Q. And the receipts made out by the War Relocation Authority to you were in the name of Fred Oyama?

A. Yes, sir.

Q. For rental on Fred Oyama's eight acres at Bay Boulevard and J Streets, Chula Vista, for a certain period?

A. Yes.

Q. And when you received this letter you saw that it said here "For account of Fred Oyama?"

A. Yes.

Q. And that is true also of the receipt which you received from Oakley pertaining to $330.34?

A. That was the rent for the dwelling.

Q. For the account of Fred Oyama?

A. Yes.

Mr. Wirin: We will offer these documents.

Mr. Carnes: No objection.

The Court: They may be received, the two of them, I take it as one document?

Mr. Wirin: If you would rather.

[fol. 170] The Court: Very well. They will be received as Defendants' Exhibit D.

(Receipts received in evidence and marked Defendants' Exhibit D.)

Mr. Wirin: That closes my cross-examination, your Honor.

Redirect examination.

By Mr. Carnes:

Q. Mr. Kurfurst, on your direct examination you stated that you knew the father as Fred Oyama?

A. Yes.

Q. But did not know what the boy's name was?

A. Well, he is Junior; that is all I know, Junior Oyama. That is, I didn't know the boy because he was only eight years old when I saw him last; a little fellow. They moved to Capistrano so we had no contact with them very much.

Q. You stated that you knew—in cross-examination—that you knew that the girl, June Kushino, was the owner of part of the property. Will you state what you know about the ownership of that property and how you know it?

A. Well, I can't just say—It was through them—June has two acres in the property. I think it is right where the house is, because she had the household things and everything, but it was eight acres in the tract and June had two [fol. 171] acres, an acre and a half or two acres, the dwelling part, because I know she was interested in it, but

whether it is on record in June's name or not, I don't know. That is just hearsay, through them, is all.

Q. What members of the family talked to you about that ownership?

A. June.

Q. June?

A. Yes.

Q. Did she ask you to send her any of the rent?

A. No, send it all to Oyama.

Q. That was at her request?

A. Yes.

Mr. Carnes: That is all.

Recross-examination.

By Mr. Wirin:

Q. You meant, by June Kushino, you meant the daughter?

A. The daughter of R. Kushino, yes. That is the brother-in-law to Oyama.

Q. When you wrote to Mr. Oakley of the War Relocation Authority in connection with this property and you used—I think I asked this but I want to make it clear—you used the words up here "Fred Yoshihiro Oyama and June Kushino" and you were referring to the young boy, the kids?

A. The kids, supposed to be.

[fol. 172] Q. Irrespective of the spelling or the pronunciation you were referring to the boy and the girl?

A. Well, we did business through the girl, mostly, and, of course, it was for the two kids, I guess. But the checks, the way I understood, I made the checks to Fred.

Q. Fred Oyama?

A. Fred Oyama. Whether it was the old man or the young fellow, I didn't know who was who, but that was the way it was requested to me, through this Mr. Oakley.

Q. But the reference which you made in this letter of April 8, which is Defendants' Exhibit A, was to the two kids?

A. Yes.

Mr. Wirin: Now, I am through.

The Court: Let me see Plaintiff's Exhibits 3 and 4.

Examine Plaintiff's 3 there with reference to the en-

dorsement, the part of the photostat that shows the endorsement. Are you familiar with that signature?

The Witness: Yes. That is my wife's signature.

The Court: No, no. On this side.

The Witness: No, I am not. I don't know who signed it, whether the boy signed it or Mr. Oyama. I don't know that.

The Court: All right.

The Witness: I couldn't verify either one of them.

The Court: Is there anything further from this witness?

[fol. 173] Mr. Carnes: That is all.

The Court: Can't he be excused with the understanding that if it becomes necessary for you to recall him you can do so?

The Witness: You can call me by phone.

Mr. Wirin: Yes. That will be satisfactory. Some arrangements will be made for the return of those other documents if he wants them.

(Witness excused.)

Mr. Carnes: Your Honor, I would suggest, in as much as the other witnesses were excused until 10:00 o'clock tomorrow, that we recess until that time.

The Court: You have nothing else available?

Mr. Carner: No, your Honor.

Mr. Wirin: That is entirely agreeable.

The Court: We will adjourn until 10:00 o'clock in the morning.

(Adjournment until 10:00 A. M. Wednesday, August 22, 1945.)

[fol. 174] San Diego, California, Wednesday, August 22, 1945; 10:00 A. M.

COLLOQUY BETWEEN COURT AND COUNSEL

The Court: People against Oyama.

Mr. Carnes: If the Court please, I believe, from the statement made by Mr. Wirin that the defendant Oyama is somewhere in the city, or somewhere in the building, I would like to call him under Section 2055 of the Code of Civil Procedure. I would like to make an inquiry of Mr. Wirin whether he is available for that purpose.

Mr. Wirin: May I state to the Court that Mr. Oyama is here. I have talked to him or attempted to talk to him and I discovered that he speaks very little English and understands very little English. As a matter of fact, he was here this morning and I advised him to go and try to find someone who can interpret.

The defendant Oyama has not been su*pbo*enaed by the People, and so far as I am concerned, unless the Court advises to the contrary, he is under no obligation to be here. I have no intention of having him here until I need him in the presentation of my case, and I am not certain whether that will be necessary nor have I determined what I should do about it. This is the first information by anyone on behalf of the plaintiff that the defendant was needed as a witness for the plaintiff. This cause has been pending approximately a year and no effort has been made to take the deposition of the defendant. A deposition could be [fol. 175] taken. To be sure, he was not living in California, but there is a legal process for the taking of a deposition of a witness out of the state and that has been done in a number of cases, escheat cases by the plaintiff, through the Attorney General.

Mr. Mattoon: Which one?

Mr. Wirin: I understood there was one in Arizona where proceedings were instituted in an appropriate court in Arizona for the taking of the testimony of a defendant or a witness. Irrespective of that fact, certain process has been available to the plaintiff, and, as I say, no request or suggestion or demand has ever been made upon me for the taking of the deposition but, on the contrary, the plaintiff for the last number of months has insisted upon going forward with an immediate trial and has assured me they had ample evidence to go forward and to prove their case. I arranged for Mr. Oyama to come here primarily for my convenience, in order that I might confer with him, and not to produce him as a witness in court unless the defense so determines, after the case of the plaintiff is in. I do not feel, unless the court advises me to the contrary, that there is any obligation to produce the defendant for the plaintiff.

The Court: I cannot require him to be produced unless process has been served on him to require his attendance. I cannot even ask you where he is.

[fol. 176] Mr. Wirin: I have no objection to stating where he is, but in the absence of process I don't feel that I am under obligation to produce him. I hope this discussion will not hurt his case.

The Court: No. The only thing that occurs to me, since this has developed, is that you were urgently insistent upon a continuance of this case until today. Yesterday you did not want to start to trial because your client wasn't here. You wanted him present in court in order that you might properly cross examine the People's witnesses. But that has nothing to do with the determination of the present question at all.

Mr. Wirin: I believe I also stated further, in that connection, that my primary concern, frankly, was to talk to the defendant in order to familiarize myself with the case.

The Court: Now, Mr. Wirin, that was not so. You have changed your attitude since yesterday. You might as well recognize it. Your statement yesterday was that you wished to continue your examination of the People's witness because you wished to have your client in court so that you might properly cross examine the witness. Now, that, was your attitude yesterday and you couldn't do that merely by conference with him outside of court.

Mr. Wirin: Your Honor is correct about that. May I make this further explanation: After attempting to talk to [fol. 177] him and discovering that he understood English so little, I decided that he was of no use to me here in the absence of his having also an interpreter, so I dispensed with his being here because he wasn't the kind of use to me that I thought he would be or that he would be if he were a person who was sitting next to you who understood English and who also understood the facts of the case. However, your statement is correct.

Mr. Carnes: If the Court please, particularly since, and in view of Mr. Wirin's opening statement yesterday, that he agrees on the proposition of law that the obligation of proceeding with evidence arises on the admission by the alien that he furnished the consideration for the purchase of the property, the plaintiff will rest at this time.

Mr. Wirin: May I have a moment to gather my thoughts, your Honor?

MOTION TO STRIKE AND DENIAL THEREOF

We have a motion to make, first. Your Honor will recall that we made objection to the introduction of evidence and the Court overruled the objection, subject to a motion to strike the evidence. We make that motion now on the same grounds stated in the objection to the introduction of evidence and I intend to submit the motion without argument at this time. Probably, in view of the next step I will take, the matter can perhaps also be considered appropriate at a latter stage of the case.

The Court: Very well. Motion will be denied.

[fol. 178] Mr. Wirin: Now, we would like to ask leave of the Court at this time to amend our answer by interlineation. The proposed amendment does not raise any issue that needs the taking of evidence—no factual evidence—and is as follows: At page 3, line 25 of the answer, we would like to add the following sentence or paragraph:

> "For an affirmative defense the defendants allege that the plaintiff should not recover because of laches."

That sentence or paragraph—we have already raised the issue of the statute of limitations and the defense of laches is analogous.

The Court: Is there any objection?

Mr. Wirin: We won't argue the matter.

The Court: Very well. There apparently being no objection the amendment will be allowed.

Mr. Wirin: The defendants rest.

The Court: Very well.

Mr. Wirin: Now, we should like to argue the matter and I would like a few moments to organize my material as I think it will be much briefer and more persuasive.

The Court: That will be satisfactory. How much time do you wish?

Mr. Wirin: Ten or fifteen minutes.

The Court: I might say this that it would seem to me, in view of the apparent agreement between counsel as to the [fol. 179] issues and as to the law, that the case will not require an opening argument by the plaintiff. I think the burden is on you now, so you will begin your argument.

Mr. Wirin: I will be ready to carry the laboring oar.

(Short recess.)

(Argument by Mr. Wirin, not reported.)

STATEMENT OF COURT

The Court: Well, counsel for the defendants seems to concede in his argument that in the absence of any evidence at all—if the matter had been submitted upon the agreed statement of facts and of the law,—the judgment would necessarily have been for the plaintiff in the case, but he contends that the evidence introduced by the plaintiff overcomes the presumption which is set out in the statute and I gather his contention to be that the preponderance of evidence is in favor, or rather that the plaintiff has now failed to establish its case by a preponderance of the evidence, the determination of that contention depending entirely upon an interpretation of the exhibits introduced in the trial and the testimony given by the witness Mr. Kurfurst. That is the problem with which I am faced.

In the first place the contention is that the exhibits indicate that there was a complete understanding by everyone involved in the transactions concerning the real property; that all of the business transactions were being done for and on behalf of the minor Fred Oyama and not for and on behalf of the father. The outstanding element in the [fol. 180] evidence of Mr. Kurfurst is, in my opinion, to this effect: That the father also was known by the name of Fred Oyama to those who did business with him in that community, so I can see no inference to be drawn from the exhibits here merely because they were in the name of Fred Oyama, the minor, because there are many instances where there is little in a name. The name that you adopt and are known by is, in effect, your name. There is nothing in law that would prevent me from being known by my own son's name if I wanted to be known by that name and adopted the custom of using it. I know of nothing in law that would prevent me from using it in doing my business, so I know of no reason why we should, or the Court could draw an inference from the use of the name "Fred Oyama" by the father.

Now, in the absence of any evidence that the motives and conduct of a person of Japanese citizenship *is* any different from that of one of our own citizens, I should draw whatever inferences as to motive that there are to be drawn on the same basis and for the same reasons that I should draw them if the person involved was a white American citizen. In the first place, looking at this situation with reference

to the guardianship matter, it is to be noted that the guardianship proceedings were instituted at a time when the minor, Fred Oyama, was seven, I believe—either seven or eight years of age. Now, in our ordinary dealings we just don't do that sort of thing unless there is a good reason [fol. 181] for it. Why should I, for instance, have taken title to real property in my son's name when he was seven or eight years of age, thereby putting it beyond my power to deal with it directly, to deed it away, to borow money on it and to make free disposition of it in any other way that I saw fit to do so unless there was a good strong reason why I should do that. We just don't do that sort of thing and people generally do not do that sort of thing. So, rather than to draw the inference that the property was put into the seven year old boy's name in order to provide for a college education for him, or something of that kind, I think that the more reasonable inference to draw would be that there was some other good reason for doing that very thing.

I note that counsel argued that we shouldn't give much, if any consideration, to the fact that the law has not been complied with in the filing of the required reports and accounts. I cannot agree with counsel about that because if good faith was present in the mind of the guardian it is more likely than not that he would have in all respects complied with the requirements of law in connection with the guardianship and his failure to do so probably adds some strength to the theory of the plaintiff in this case—not a great deal because sometimes people who are not informed as to the requirements of the law in connection with those matters simply fail to do the thing that the law requires them to do. The inference is not a strong [fol. 182] one but it is to be noted in passing in connection with counsel's claim that Mr. Oyama, the father here, is not at all familiar with the English language. It is to be noted that there is entirely no evidence to that effect and it is further to be noted that from the testimony of Mr. Kurfurst and the conversation that he overheard between the father and someone else in a garage—Mr. Kurfurst not being familiar with the Japanese language and there being no indication in the evidence that he had any difficulty in understanding the statements made by Mr. Oyama—and the testimony of Mr. Kurfurst being to the effect that Mr. Oyama was the individual with whom business was done in that community, in business done by him and

by others, it seems to me that the contention that he doesn't understand the English language is not supported at all by the evidence in the case. Furthermore there is the theory of law—and of course we are governed in this action by the rules of trial governing civil cases—the father, Mr. Oyama, has not offered himself as a witness in the case, and from his unexplained failure to offer himself as a witness the Court is required, as I understand it, to draw an unfavorable inference. That is, that his testimony would be unfavorable to his case. If I am wrong about that I, of course, wouldn't mind being told that I was wrong, but I think that inference must be drawn from his failure to testify.

I think that the situation we have here about the burden, [fol. 183] however weighty or however slight it may be that is by the Legislation placed upon the alien or placed on the defendant to overcome the presumption is a real presumption and amounts to evidence and that in order for the defendant to successfully defend the case he must, either as stated by counsel, either from the lips of the plaintiff's witnesses or from witnesses on his own behalf, develop enough to overcome that presumption and that, in my opinion, he has not done. I think that there is only one way I could determine this matter under this evidence and that would be simply to hold, that the plaintiff has, by the application of the inference, the statutory inference, the presumption, and by the evidence that has been produced here, has maintained the preponderance of evidence and that judgment be for the plaintiff.

Mr. Wirin: May I address the Court a moment?

The Court: Certainly.

Mr. Wirin: I haven't made it clear as to what our position is with respect to the constitutionality of Section 9 and the subdivisions thereunder, pertaining to the statutory presumption.

The Court: I think you should reserve to yourself the right to present that matter if it goes up on appeal. The record should show that those questions and the question as to the statute of limitations and laches should be reserved by you in some way in a statement made for the [fol. 184] record. I have no objection to your doing that at this time.

Mr. Wirin: The defendants have not conceded the constitutionality of Section 9 and the various subdivisions of the Alien Land Law. We challenge the constitutionality as offending due process. That, however, has been passed upon by the highest courts adversely to the claim I am urging and I will therefore not argue the matter before the Court. I do not want to be in the position of having conceded the constitutionality.

I think as to the other matters we can raise them adequately. I don't see the necessity nor do I desire to make any further statement.

The Court: Very well. The plaintiff will prepare findings.

[fol. 185] [Reporter's certificate to foregoing transcript omitted in printing]

[fol. 186] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF SAN DIEGO

[Title omitted]

ORDER APPROVING TRANSCRIPT—October 20, 1945

In the above entitled cause, the foregoing Reporter's Transcript having been presented to the Court for approval and the Court having examined the same; and,

It appearing that the same is a full, true and fair transcript of the proceedings had at the trial of the said cause, the testimony offered or taken, evidence offered or received, acts and statements of the Court, also all objections of counsel and matters to which the same relate;

The said transcript is a true and correct transcript of said matters, and the same is hereby settled and allowed as the Transcript on Appeal in the above entitled matter.

Done in open court this 20 day of Oct., 1945.

Joe L. Shell, Judge of the Superior Court.

[fol. 187] IN THE SUPREME COURT OF THE STATE OF CALIFORNIA, IN BANK

L. A. 19533

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent,

v.

FRED Y. OYAMA, also known as FRED YOSHIHIRO OYAMA, a minor; Kajiro Oyama, also known as K. Oyama, individually and as guardian of the person and estate of Fred Yoshihiro Oyama, a minor; Kohide Oyama, formerly Kohide Kushino; Ririchi Kushino; June Kushino, also known as Junko Kushino; Yonezo Oyama; Lawrence W. Junker, as administrator of the estate of John Mares, deceased; George Schertzer; John Kurfurst; Doe One; Doe Two and Doe Three, Defendants and Appellants

OPINION—Filed October 31, 1946

Principally upon the ground that the United States Supreme Court has changed the constitutional tests applicable to state legislation such as the Alien Land Law (Alien Property Initiative Act of 1920, Stats. 1921, p. lxxxiii, as amended; 1 Deering's Gen. Laws, Act 261), the validity of that statute is again challenged. Another question presented for decision concerns the effect of the recent amendment of the federal law which allows, under certain circumstances, a member of the Japanese race to become a citizen of the United States.

[fol. 188] In the petition filed by the attorney general, he asserted that certain real property, by reason of its conveyance in violation of the Alien Land Law, has escheated to the state. Two causes of action were pleaded. In the first one, it was alleged that Kajiro Oyama, Kohide Oyama, formerly Kohide Kushino, and Ririchi Kushino, are of the Japanese race, natives of the Empire of Japan, and citizens and subjects of that country and, by reason thereof, are not eligible to citizenship under the laws of the United States; that Fred Y. Oyama is the son of Kajiro and Kohide Oyama and is of the Japanese race but was born in California in 1928; and that June Kushino also is of the Japanese race and was born in California in 1921. There has never been a treaty permitting a

native of Japan to acquire an interest in the agricultural land of this country. Since 1935, by appointment of the Superior Court of the State of California, in and for the County of San Diego, Kajiro Oyama has been the duly qualified guardian of the person and estate of Fred Y. Oyama, a minor. June Kushino attained the age of 21 years in 1942 and during her minority, Ririchi Kushino was the guardian of her person and estate.

In 1934, the petition continued, Kajiro Oyama and Kohide Oyama purchased certain agricultural land in San Diego county and a purported conveyance of it was made by one Yonezo Oyama to Fred Y. Oyama. The purchase price of $4,000 was paid to Yonezo Oyama by Kajiro and Kohide Oyama. Upon the execution and delivery of this purported deed, Kajiro and Kohide Oyama entered into the posses- [fol. 189] sion of the property and have ever since occupied and cultivated it as their own, and have had in their own right the beneficial use and enjoyment of the lands for agricultural purposes. The purchase of the property and the taking of the deed in the name of Fred Y. Oyama was a mere subterfuge, a fraud upon the People of the State of California and a violation of the Alien Land Law of California. Moreover, these persons acted willfully, knowingly and with intent to obtain the ownership and use of the agricultural lands for their own use.

Other allegations of this count were that Kajiro Oyama failed to render any account to the superior court for his receipts and expenditures as guardian, and has not filed any annual or other account or report with the Secretary of State of California, as required by section 5 of the Alien Land Law. No account or report has been filed by the guardian with the County Clerk of San Diego county or served upon the district attorney; but in conducting business affecting the land in controversy, Kajiro Oyama used the name "Fred Oyama" and "Y. Oyama", and maintained checking accounts in each of those names for the purpose of evading and violating the Alien Land Law.

The second cause of action incorporated some of the allegations of the first count, including those having to do with the race, nativity, citizenship and status of the parties. It then pleaded that in 1937, the Superior Court of the State of California, in and for the County of San Diego [fol. 190] in the matter of the Guardianship of June Kushino, made an order confirming the sale of certain de-

scribed land in that county from her to Fred Y. Oyama for a purchase price of $1,500. Upon the making and recording of that order, Kajiro and Kohide Oyama entered into possession of the property and have since occupied and used it as their own and have had in their own right the beneficial use of the land for agricultural purposes. All of these acts were done by Kajiro and Kohide Oyama, willfully, knowingly and with intent to violate the Alien Land Law of the State of California. The prayer of the petition was that the land conveyed to Fred Y. Oyama be decreed to have escheated to the state as of the date of the respective deeds; also that, as against the state, each of the defendants be forever barred from asserting any claim or title to either parcel.

The defendants demurred to the petition upon the grounds that it did not state facts sufficient to state a cause of action, that the court lacked jurisdiction, that the California Alien Land Law is unconstitutional, and that the causes of action are barred by the statutes of limitations. The demurrer was overruled.

By answer, the defendants admitted the race and Japanese citizenship of Kajiro Oyama, Kohide Oyama, and Riichi Kushino, but denied that, by reason thereof, they are not eligible to citizenship under the laws of the United States. They admitted the pleaded facts as to the birth and race of Fred Y. Oyama and June Kushino, and also the allegations concerning the guardianship proceedings. [fol. 191] But the answer denied that Kajiro and Kohide Oyama purchased the property described in the complaint and asserted that Kajiro Oyama provided the money to purchase the two parcels of property as a gift to his son. Each of the transactions was made in good faith and for the purpose of acquiring for their son a means of earning a livelihood and for the further purpose of guarding and husbanding the gift for that purpose. The property described in the complaint is agricultural land, but Kajiro and Kohide Oyama have not occupied, used or cultivated the land as their own or had the beneficial use of it. As an affirmative defense, the defendants alleged that the state should not recover because of laches.

Upon the trial of these issues, John C. Kurfurst was the only witness. He testified that he had known the Oyama and Kushino families since about 1932. When the

Japanese were evacuated from the Pacific coast, he rented the land in controversy and, by two checks, paid the rent to Fred Oyama. These checks were returned to him endorsed in that name. Kurfurst had never heard the name Kajiro Oyama; he had always known the father of the family as "Fred" and stated that "everybody else called him Fred". But he had received a letter signed "Fred Oyama" notifying him that the property was being turned over to a Mr. Kelly although Kurfurst had never heard the writer refer to himself by that name.

Other testimony of Kurfurst was that at one time Oyama, [fol. 192] senior, said: "Some day the boy will have a good piece of property because that is going to be valuable." However, he admitted that in a letter which he wrote, in referring to "Fred Yoshihiro Oyama", he meant the son and not the father. He knew that the property belonged to the boy, Fred Oyama, and to June Kushino; also that the father was running the boy's business. But he did not know whether the checks were made out to the "old man or the young fellow" and he did not know "whether the boy signed it or Mr. Oyama".

Evidence of official records showed that no reports pursuant to the requirements of the Alien Land Law had been filed by the defendants. The state also proved that in the guardianship proceeding, on two occasions, the father of Fred Y. Oyama, as guardian, applied for leave of court to borrow money and to mortgage the property as security for the indebtedness. Both applications were granted.

Upon this evidence the court found all of the facts alleged in the petition to be true. The conclusions of law drawn from these facts were that, as of 1934 and 1937, respectively, title to the two parcels of real propery in question was vested in and did escheat to the State of California and the defendants were perpetually enjoined from setting up or making any claim to the land. The appeal is from that judgment.

The defendants contend that the Alien Land Law is unconstitutional because enacted for the purpose of and administered in a manner to discriminate against persons solely because of race. It is urged that as to both Kajiro Oyama, an alien, and Fred Oyama, a citizen, the statute denies due process of law as guaranteed by Article I, section 13, of the California Constitution, and violates Article

[fol. 193] I, section 1, of the same Constitution which guarantees to all men the right to enjoy life, liberty and property. The point is also urged that the Alien Land Law constitutes an unlawful delegation of legislative power to the federal government, and that the phrase, "ineligible to citizenship" is vague, indefinite and constitutes a denial of due process.

As to Fred Oyama, a citizen, it is argued that the Alien Land Law violates the mandate of the California Constitution that no citizen or class of citizens shall be "granted privileges or immunities which, upon the same terms, shall not be granted to all citizens." (Const. Art. I, sec. 21.) Considering the statute in its application to both Kajiro and Fred Oyama, the defendants continue, it deprives them of property without due process of law and denies them equal protection of the laws and deprives Fred Oyama of privileges and immunities as a citizen, all in violation of the Fourteenth Amendment to the Constitution of the United States. Counsel also contend that, although the Alien Land Law has been upheld, the United States Supreme Court has changed the constitutional test applicable to state legislation discriminating against a group and its members because of race from the "rational basis" test to the "clear and present danger" test. A decision approving a statute does not bar a contrary determination at another time and under a different set of circumstances. Furthermore, by virtue of a recent amendment to the Naturalization Act, persons of Japanese birth no longer are ineligible to citizenship solely because of race, and the Alien Land Law is inapplicable to Kajiro Oyama because, if he [fol. 194] joins the Army, he may become a citizen.

The defendants also rely upon the statutes of limitations. As they state the rights of the parties, by section 312 of the Code of Civil Procedure all actions are barred by some statute of limitations and the state's claims are barred by the one-year, the three-year, the four-year and the ten-year statutes of limitations. More specifically, the present suit comes within section 340 of the Code of Civil Procedure. Section 338, subdivision 1 of the same code also is applicable because this is an "action upon a liability created by statute, other than a penalty or forfeiture". Moreover, section 338, subdivision 4 of the Code of Civil Procedure bars the remedy since the effect of the judgment is that the

defendants acted fraudulently. Section 343 also applies, and the broad provisions of section 315 of the same code include an escheat action. In conclusion, it is contended that the doctrine of laches is applicable to each cause of action. Two amicus curiae briefs filed on behalf of appellants develop in more detail the principal contentions in regard to the bar of the statutes of limitations.

The attorney general stands upon the decision of this Court and that of the United States Supreme Court upholding the constitutionality of the Alien Land Law as a proper exercise of the state's police power. It has been the invariable policy of the United States, he declares, to discriminate against aliens by racial classification for purposes of immigration and naturalization. There is a rational basis for discrimination, and the distinction between eligible and ineligible aliens is made by federal, not state, statutes. Moreover, the test of a "clear and present [fol. 195] danger" is limited to fundamental civil liberties and not to property rights and no evidence was presented establishing unconstitutional discrimination. The recent amendment to the naturalization laws does not abolish ineligibility to citizenship of aliens regardless of race, as the defendants contend, but only extends the privilege of naturalization to those serving honorably in the armed forces during World War II. Furthermore, since title to the property vested in the State of California long prior to the act of Congress attempted to be relied upon by the defendants, the later legislation can have no effect upon the state's title.

In regard to the statutes of limitations, the state contends that section 340 of the Code of Civil Procedure is not applicable to the recovery of real property and there is neither a forfeiture nor the imposition of a penalty under the Alien Land Law. Section 338, subdivision 1, does not apply, because no question of "liability" is involved. Subdivision 4 of the same section deals with actions based upon fraud, which is only an incidental issue in the present suit; the gist of the action is that the state claims to have title to land and the defendants are asserting unfounded claims to it. As to section 343 of the Code of Civil Procedure, the bar of that statute was not raised by the pleadings and it has no application to an escheat proceeding.

Considering section 315 of the Code of Civil Procedure, the attorney general takes the position that although there

[fol. 196] is no express language in the Alien Land Law which excepts its requirements from the operation of other provisions of law, the plain policy of the enactment is wholly inconsistent with the application of a statute of limitations and the legislature has so declared in a 1945 amendment to the statute. And because there is no showing of any injury by the delay, the doctrine of laches is not applicable, and the finding upon that issue is beyond the reach of an appellate court. The amicus curiae brief filed upon behalf of the state presents substantially the same arguments as those advanced by the attorney general.

The Alien Land Law legislates concerning the right to own land in this state. The scope of the statute is much broader than the acquisition and ownership of land; it includes the right to "acquire, possess, enjoy, use, cultivate, occupy, transfer, transmit and inherit real property . . . [or to] . . . . have in whole or in part the beneficial use thereof." (Secs. 1, 2.) This right is given to citizens of the United States and to all aliens eligible to become such; aliens who are not eligible to citizenship under the laws of the United States can enjoy the right only in the manner and to the extent and for the purposes prescribed by any treaty existing at the time of the enactment of the statute between the government of the United States and the nation or country of which the alien is a citizen or subject. (Secs. 1, 2.) Section 4 of the statute, as originally enacted, denied to an alien parent the right to become the guardian of the estate of his native-born child and was held invalid. (Es-[fol. 197] tate of Yano, 188 Cal. 645.) However, in 1943, the legislature amended that section, allowing the appointment of an alien guardian but preventing such guardian from enjoying, either directly or indirectly, the beneficial use of land owned by the minor. The new provision requires the guardian to make an annual report to the court showing all moneys expended and received, and to serve a copy of such report upon the district attorney of the county, together with notice of the hearing of the report. Failure to do so renders the guardian punishable by fine, imprisonment, or both.

Section 5 directs the guardian to file in the office of the secretary of state, and in the office of the county clerk of each county in which any property is situated, an annual report describing "property . . . held by him on behalf of the alien or minor; . . . . the date when each item of

such property came into his possession or control; and itemized account of all such expenditures, investments, rents, issues and profits in respect to the administration and control of such property with particular reference to holdings of corporate stock and leases . . . and other agreements in respect to land and the handling or sale of products thereof." Violation of this section is punishable by imprisonment, fine, or both.

Section 7 of the statute, as amended in 1923, states that real property acquired in violation of the act by an ineligible alien "shall escheat as of the date of such acquiring, to, and [fol. 198] become and remain the property of the state of California." Section 8.5, added in 1945, provides: "No statute of limitations shall apply or operate as a bar to any escheat action or proceeding now pending or hereafter commenced pursuant to the provisions of this act." As a part of the same enactment, the legislature declared that it "does not constitute a change in, but is declaratory of, the preexisting law." (Stats. 1945, ch. 1136.)

By other provisions of the legislation, where the property interest attempted to be transferred is of such character that the ineligible alien "is inhibited from acquiring, possessing, enjoying, using, cultivating, occupying, transferring, transmitting or inheriting it", and if the conveyance is made "with the intent to prevent, evade or avoid escheat", the "transfer of the real property, or any interest therein, though colorable in form, shall be void as to the state and the interest thereby conveyed as sought to be conveyed shall escheat to the state as of the date of such transfer." (Sec. 9.) By the terms of the same section, a prima facie presumption that the conveyance is made with such intent shall arise upon proof of: "(a) The taking of the property in the name of a person other than the persons mentioned in section two hereof if the consideration is paid or agreed or understood to be paid by an alien mentioned in section two hereof . . . ."

The determination as to eligibility to citizenship rests exclusively with the federal government and is fixed by [fol. 199] Congress in the naturalization laws. Whomever it endows with the right to become a citizen may acquire and own land in California.

Eligibility has been extended to "white persons, persons of African nativity or descent, descendants of races indigenous to the Western Hemisphere, and Chinese persons

or persons of Chinese descent" and includes native-born Filipinos having honorable service in our armed forces and former citizens who are otherwise eligible. (57 Stats. 601, 8 U. S. C. A., sec. 703.) In 1942, the Naturalization Act was amended (56 Stats. 182, 8 U. S. C. A., sec. 1001) to extend the privilege of naturalization to include "any person not a citizen, regardless of age, who has served or hereafter serves honorably in the military or naval forces of the United States during the present war and who shall have been at the time of his enlistment or induction a resident thereof and who (a) was lawfully admitted into the United States, including its Territories and possessions, or (b) having entered the United States . . . prior to September 1, 1943, being unable to establish lawful admission into the United States serves honorably in such forces beyong the continental limits of the United States or has so served. . . ."

The state has the right to regulate the tenure and disposition of real property within its boundaries. (Mott v. Cline, 200 Cal. 434; Blythe v. Hinckley, 127 Cal. 431; Terrace v. Thompson, 263 U. S. 197; United States v. Fox, 94 U. S. 315.) It also has the power, in the absence of a treaty to the contrary, to forbid the taking or holding of property [fol. 200] within its limits by aliens (Mott v. Cline, *supra*, p. 447; In re Y. Akado, 188 Cal. 739, 743; Blythe v. Hinckley, supra, p. 436; Terrace v. Thompson, *supra*, p. 217) and our Constitution leaves to the legislature this power with regard to all aliens ineligible to citizenship. (Cal. Const., Art. I, sec. 17; In re Y. Akado, *supra*, p. 743.)

The Alien Land Law expressly honors every right vouchsafed by a treaty between this and another nation. In all cases where the right to own land in the United States by citizens of a foreign nation is granted by treaty, such right is recognized and fully portected. (Sec. 2.) "The treaty between the United States and Japan provides that citizens of Japan residing in the United States may lease land for residential and commercial purposes, but it contains no provision authorizing an alien of the Japanese race to lease or acquire land for agricultural purposes. Consequently the initiative alien law . . . prohibits the acquisition by such alien of any agricultural land situated in this state." (In re Y. Akado, *supra*, p. 740; see also: Terrace v. Thompson, supra, p. 223; Porterfield v. Webb, 263 U. S.

225, 232.) The abrogation of this treaty on January 26, 1940, has no effect upon the rights of the parties in the present litigation.

Shortly after the People enacted the Alien Land Law, a suit was brought to enjoin the attorney general from enforcing its provisions. The plaintiffs complained "that they have been unlawfully coerced by . . . threats of prosecution from entering into . . . agreements [pertaining to the planting, cultivating, and farming of certain agricultural lands] and are thereby deprived of their property without due process of law and are denied equal protection [fol. 201] of the law in contravention to the fourteenth amendment of the federal constitution." It was held that the legislation does not "offend any clause or provision of the state or federal constitution or violate any treaty obligation or right existing between this country and the empire of Japan." As to the validity of certain cropping contracts, the court said, quoting from Webb v. O'Brien, 263 U. S. 313: "Conceivably, by the use of such contract, the population living on and cultivating the farm lands might come to be made up largely of ineligible aliens. The allegiance of the farmers to the state directly affects its strength and safety. (Terrace et al. v. Thompson, *supra*.) We think it within the power of the state to deny to ineligible aliens the privilege so to use agricultural lands within its borders." (Porterfield v. Webb, 195 Cal. 71.)

The Webb v. O'Brien decision, it was pointed out in this case, "rests largely upon broad principles of national safety and public welfare. Unquestionably the farming of lands by ineligible aliens would give them a use, occupancy, and benefit of agricultural lands which in effect would amount to a deprivation of its use, enjoyment and occupancy by the citizen. Any other theory would be incompatible with the occupation of husbandry . . . Racial distinctions may furnish legitimate grounds for classifications under some conditions of social or governmental necessities." (195 Cal. at p. 82.)

In the case of Mott v. Cline, *supra*, the owner-lessor challenged the validity of a certain option provision in a lease, [fol. 202] the contention being that the lessee was an ineligible alien. As to the constitutionality of the statute, the court said: "It has been firmly settled by the decisions of both federal and state courts . . . that the adoption of the Alien Land Acts was a lawful exercise of the police

power. In fact, it is the exercise of that power in its highest and truest sense. The ownership of the soil by persons morally bound by obligations of citizenship is vital to the political existence of a state. It directly affects its welfare and safety." (200 Cal. at p. 447.)

The status of aliens in connection with the ownership of real property was also considered by the United States Supreme Court in Terrace v. Thompson, *supra*. The court there pointed out that "two classes of aliens inevitably result from the naturalization laws,—those who may and those who may not become citizens. The rule established by Congress on this subject, in and of itself, furnishes a reasonable basis for classification in a state law withholding from aliens the privilege of land ownership as defined in the act." Considering the contention that an alien land law similar to our own enacted by the State of Washington was repugnant to the due process clause and the equal protection clause of the Fourteenth Amendment, the court declared: "State legislation applying alike and equally to all aliens, withholding from them the right to own land, cannot be said to be capricious, or to amount to an arbitrary deprivation of liberty or property, or to transgress the due process clause." Upon the subject of equal protection the [fol. 203] court held that the classification was reasonable, saying that the rule established by Congress on the subject of naturalization "in and of itself, furnishes a reasonable basis for classification in a state law withholding from aliens the privilege of land ownership as defined in the act." The broad basis of the decision is that "one who is not a citizen and cannot become one lacks an interest in, and the power to effectually work for the welfare of, the state, and, so lacking, the state may rightfully deny him the right to own and lease real estate within its boundaries." In another case, the California statute was upheld upon these grounds, with the comment that both acts were within the police power of the respective states. (Porterfield v. Webb, 263 U. S. 255.) Other federal court cases in which the constitutionality of the Alien Land Law of California has been considered are: Morrison v. California, 291 U. S. 82 (reversing People v. Morrison, 218 Cal. 287, and declaring section 9a of the Alien Land Law unconstitutional); Cockrill v. California, 268 U. S. 258 (sustaining constitutionality of the presumption set forth in section 9, subd. (a), of the Alien Land Law); Frick v. Webb, 263 U. S. 326.

The defendants rely upon West Virginia State Board of Education v. Barnette, 319 U. S. 624, and Thomas v. Collins, 323 U. S. 516, for the proposition that modern doctrines of constitutional law extend the protection of the First Amendment and the Fourteenth Amendment to all cases where the legislature cannot justifiably find a "clear [fol. 204] and present danger" as a basis for restricting the liberty of the individual. However, Justice Jackson, speaking for the majority in the first of these cases, clearly distinguished between the test to be used when dealing with fundamental liberties, which include freedoms of speech, press, assembly, and worship, and other rights. He said: "In weighing arguments of the parties it is important to distinguish between the due process clause of the Fourteenth Amendment as an instrument for transmitting the principles of the First Amendment and those cases in which it is applied for its own sake. The test of legislation which collides with the Fourteenth Amendment, because it also collides with the principles of the First, is much more definite than the test when only the Fourteenth is involved. Much of the vagueness of the due process clause disappears when the specific prohibitions of the First become its standard. The right of a State to regulate, for example, a public utility may well include, so far as the due process test is concerned, power to impose all of the restrictions which a legislature may have a 'rational basis' for adopting. But freedoms of speech and of press, of assembly, and of worship may not be infringed on such slender grounds. They are susceptible of restriction only to prevent grave and immediate danger to interests which the State may lawfully protect. It is important to note that while it is the Fourteenth Amendment which bears directly upon the State it is the more specific limiting principles of the First Amendment that finally govern this case." (319 U. S. at p. 639.) [fol. 205] And in the more recent case of Thomas v. Collins, *supra*, Justice Rutledge, speaking for the majority, made clear that the "clear and present danger" test will be applied only to those fundamental liberties protected by the First Amendment. (See also: Asbury Hospital v. Cass County, 66 S. Ct. 61; California v. Thompson, 313 U. S. 109; Clark v. Paul Gray, Inc., 306 U. S. 583; Hendrick v. Maryland, 235 U. S. 610; 33 Cal. L. Rev. 319.)

These cases and the decisions of the United States Supreme Court previously cited, including Terrace v. Thomp-

son, *supra*, and Porterfield v. Webb, *supra*, limit the test of a "clear and present danger" to fundamental liberties and do not restrict the authority of the state, under its police power, to limit the rights of aliens in regard to real property situated within its borders. It is sufficient if a rational basis is found for the classification. And considering the Alien Land Law in connection with the record now before the court, there is no evidence that the statute was unconstitutionally applied or administered.

The legislature of this state has set up eligibility to citizenship as a primary standard, and because the determination of some fact or condition incorporated in this primary standard rests elsewhere than in the legislature, or that this requirement is measured by another standard not under the control of the state and which may be subject to change, does not amount to an unconstitutional delegation of legislative authority. (Ex parte Gerino, 143 Cal. 412; In re Lasswell, 1 Cal. App. 2d 183 and cases cited therein; [fol. 206] People v. Goldfogle, 242 N. Y. 277.) This court and the United States Supreme Court in the cited cases have held that the use of the phrase, "ineligible to citizenship" does not constitute a denial of due process.

The property in question passed to the State of California by reason of deficiencies existing in the ineligible alien, and not in the citizen Oyama. The citizen is not denied any constitutional guarantees because an ineligible alien, for the purpose of evading the Alien Land Law, attempted to pass title to him. It is the deficiency of the alien father and not of the citizen son which is the controlling factor; therefore, any constitutional guarantees to which the citizen Oyama is entitled may not properly be considered, for the deficiency in a person other than himself is the cause for the escheat. Property which the citizen never had he could not lose, and as the land escheated to the state instanter, he acquired nothing by the conveyance and the Alien Land Law took nothing from him.

The trial court's findings in regard to the violation of the statute are fully supported by the evidence. The inferences to be drawn from the evidence that the real property was conveyed to the son, thereby putting it beyond the power of the father to deal with the property directly, the father's failure to file the reports required of a guardian, the unexplained failure of the father, or any one of the defendants, to offer himself as a witness, and the presumption

created by section 9 of the Alien Land Law, are ample in this regard. Indeed, this evidence convincingly points to [fol. 207] the conclusion that the minor son had no interest in the property, his name being used only as a subterfuge for the purpose of evading the Alien Land Law.

The defendants also urge that by the 1942 amendment to the Naturalization Act (56 Stats. 182, 8 U. S. C. A., sec. 1001), permitting the naturalization of every person who honorably served in the armed forces of the United States during the present war, all ineligibility to naturalization based upon race was removed. The clear purpose of Congress in granting that privilege to those persons who could not otherwise become citizens was to reward military service. Certainly the statute does not make eligible to citizenship every Japanese national, and those who take advantage of its provisions gain that status because of work well done for our country and not by reason of having the qualifications to join its armed forces. Following World War I, the same privilege was extended to Filipinos (40 Stats. 542, 8 U. S. C. sec. 388) and it was held that the amendment did not eliminate the basic requirements for naturalization and "as to those not possessing such qualifications, the distinction based on color and race was not eliminated." (Roque Espiritu De La Yala v. United States, 77 Fed. 2d 988; certiorari denied, 296 U. S. 575.) The statute relied upon by the defendants in the present case has the same effect.

Another complete answer to the contention of the defendants in regard to the changes in the requirements for naturalization is that, under the Alien Land Law, in 1934 the land described in the first count of the complaint auto- [fol. 208] matically escheated to the state, and as to the property conveyed by the estate of June Kushino, escheat occurred three years later. Title vested in the state upon these dates, and the later legislation has no effect upon that title.

The defendants claim that the present proceeding is barred by the provisions of one or more of the statutes of limitations generally applicable to civil actions. Primarily, this defense is based upon section 312 of the Code of Civil Procedure which provides: "Civil actions, without exception, can only be commenced within the period prescribed in this title, after the cause of action shall have accrued, unless where, in special cases, a different limitation is pre-

scribed by statute." But the plain meaning of this section is that the particular statutes of limitations which are found in section 315, et seq., of the Code of Civil Procedure may be invoked except as to an action authorized by legislation which includes a provision limiting the time within which it may be commenced. And the "different limitation" mentioned in section 312 clearly should be construed to include no limitation as to an action commenced under a statute which specifies that time shall not bar the right to invoke its provisions.

The clear and unmistakable purpose of the Alien Land Law at all times since it was enacted by the People as an initiative measure has been to place the ownership of real property in this state beyond the reach of an alien in- [fol. 209] eligible to citizenship. Not only is such an alien prohibited from acquiring real property, or any interest therein; the statute expressly provides that he shall not possess, enjoy, use, cultivate or occupy land. He may not convey real property, or any interest therein, or have, in whole or in part, the beneficial use of land, and any attempted transfer to an ineligible alien is void as to the state. These provisions are entirely inconsistent with a statute of limitations; they state broad principles of public policy relating to the ownership of land and declare that any conveyance made in violation of the mandate of the People shall be void.

The legislature of 1945 made this construction certain. It declared: "No statute of limitations shall apply or operate as a bar to any escheat action or proceeding now pending or hereafter commenced pursuant to the provisions" of the Alien Land Law. (Sec. 8.5.) "The amendment made by this act does not constitute a change in, but is declaratory of, the preexisting law." (Stats. 1945, ch. 1136, sec. 2.) It is entirely proper for the legislature to clarify the provisions of a statute in this manner, and for the court to follow that construction. (Standard Oil Co. v. Johnson, 24 Cal. 2d 40, 48; Union League Club v. Johnson, 18 Cal. 2d 275, 278-279.)

In regard to the special defense of laches, the court found that the action was not barred upon that ground. The record shows that no evidence was presented tending to [fol. 210] prove that any injury resulted to the defendants by reason of the lapse of time which occurred before the commencement of the proceeding and the finding is amply

justified. (Alexander v. State Capital Co., 9 Cal. 2d 304, 313; Ballagh v. Williams, 50 Cal. App. 2d 10, 13.)

The judgment is affirmed.

Edmonds, J.

We concur: Shenk, J.; Spence, J.; Schauer, J.

[fol. 211] PEOPLE

vs.

OYAMA

L. A. 19533

CONCURRING OPINION

I concur in the judgment on the ground that the decisions of the United States Supreme Court cited in the main opinion are controlling until such time as they are reexamined and modified by that court.

Traynor, J.

[fol. 212] ORDER DUE NOV. 30, 1946

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA IN BANK

L. A. No. 19533

PEOPLE

vs.

OYAMA, etc., et al.

ORDER DENYING REHEARING

By the COURT:

Appellant's petition for a rehearing is denied.

Carter, J. voting for a rehearing.

Dated Nov. 25, 1946.

Gibson, Chief Justice.

Filed Nov. 25, 1946. William I. Sullivan, Clerk, by W. J. S., S. F. Deputy.

[fol. 213] IN THE SUPREME COURT OF THE STATE OF CALIFORNIA.

Los Angeles No. 1953

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, Respondent,

vs.

FRED Y. OYAMA, Also Known as Fred Yoshihiro Oyama, a Minor; Kajiro Oyama, Also Known as K. Oyama, Individually and as Guardian of the Person and Estate of Fred Yoshihiro Oyama, a Minor; Kohide Oyama, Formerly Kohide Kushino; Riichi Kushino; June Kushino, Also Known as Junko Kushino; Yonezo Oyama; Lawrence W. Junker, as Administrator of the Estate of John Mares, Deceased; George Schertzer; John Kurfurst, et al., Defendants, Appellants

On Appeal from the Superior Court in and for the County of San Diego

JUDGMENT—October 31, 1946

The above entitled cause having been heretofore fully argued, and submitted and taken under advisement, and all and singular the law and premises having been fully considered,

It Is Ordered, Adjudged, and Decreed by the Court that the Judgment of the Superior Court in and for the County of San Diego in the above entitled cause, be and the same is hereby affirmed. Respondent to recover costs on appeal.

I, William I. Sullivan, Clerk of the Supreme Court of the State of California, do hereby certify that the foregoing is a true copy of an original judgment entered in the above entitled cause on the 31st day of October, 1946, and now remaining of record in my office.

Witness my hand and the seal of the Court, affixed at my office, this 2nd day of December, A. D. 1946.

William I. Sullivan, Clerk, by L. F. White, Deputy.

(Seal.)

[fol. 214] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 215] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed April 7, 1947

The petition herein for a writ of certiorari to the Supreme Court of the State of California is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.